SUPREME COURT OF THE UNITED STATES.

No. 517.

THE CENTRAL NATIONAL BANK OF BALTIMORE, PLAINTIFF IN ERROR,

vs.

THE ROYAL INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the Central National Bank of Baltimore, and the Royal Insurance Company, a manifest error hath happened to the great damage of the said The Central National Bank of Baltimore, as is said and as appears by its complaint. we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

Allowed:

WM. G. CHOATE,
Dist. Judge.

2 (Indorsed:) U. S. circuit court. The Central National Bank of Baltimore ag'st The Royal Insurance Company. Writ of error.

Service of within admitted.
August 30, '78.
SHIPMAN, BARLOW, LAROQUE & MACFARLAND.
AUG. 30, 1878.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to one hundred and seventeen inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of the Central National Bank of Baltimore, plaintiffs in error, against The Royal Insurance Company, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of

New York, in the second circuit, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

3 *Summons.*

The President of the United States of America to the marshal of the southern district of New York, greeting:

[L. S.] We command you that you summons the Royal Insurance Company, a foreign corporation and an alien, defendant, if it shall be found in your district, to appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the United States court and post-office building, in the city of New York, in the said southern district, on the 23d day of November, 1874, to answer unto the Central National Bank of the city of Baltimore, an inhabitant and citizen of a State of the United States, plaintiff, in a plea of trespass; and also to a certain bill of the said plaintiff against the said defendant for fifteen thousand dollars debt, according to the custom of the said court before the said judges, then and there to be exhibited, and that you have then and there this writ.

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the 31st day of October, in the year one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE,
Clerk.

GEORGE BLISS,
Pl'ff's Attorney.

4 (Indorsed:) U. S. circuit court for the southern district of New York. The Central National Bank of the city of Baltimore *vs.* The Royal Insurance Company. Copy. Capias ret. 23d Nov., 1874. George Bliss, pl'ff's att'y, 41 Chambers st. Accepted service Nov. 7, '74. J. P. for the defendant. Rec'd Nov. 7, 1874. Ent'd.

5 Circuit court of the United State' for the southern district of New York, in the second circuit.

THE CENTRAL NATIONAL BANK OF THE CITY OF BALTIMORE, PLAINTIFF,
against
THE ROYAL INSURANCE COMPANY, DEFENDANT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiff in the above entitled action, by George Bliss, its attorney, complains of the said defendant, duly summoned within the said district, and respectfully states to the court:

First. That the said plaintiff, The Central National Bank of the city of Baltimore, is, and was at the times hereinafter mentioned, a corporation duly created and existing under and by virtue of the provisions of the act of Congress of the United States, approved June 3rd, 1864, en-

titled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and the acts of Congress additional thereto and amend-
6 atory thereof, situated, located, having its place of business, and carrying on business as such corporation in the city of Baltimore, in the State of Maryland, and is and was an inhabitant and citizen of a State of the United States of America, namely, of the State of Maryland aforesaid.

Second. That the said defendant, The Royal Insurance Company, is, and was at the times hereinafter mentioned, a corporation duly created by and existing in pursuance of the statute of the Kingdom of Great Britain and Ireland, made and passed in the seventh and eighth years of the reign of Victoria, entitled, "An act for the registration, incorporation and regulation of joint stock companies," situated and having its principal place of business, and carrying on business as such corporation, in the city of Liverpool, in England, in said kingdom, and is and was an alien to the United States of America, and a citizen of England in said Kingdom of Great Britain and Ireland, as aforesaid, and a subject of said kingdom.

Third. That intermediate the ninth day of July, 1873, and the 22nd day of July, 1873, within said southern district, the plaintiff lent to the defendant, and the defendant had and received of and from the
7 plaintiff, the sum of eleven thousand four hundred sixty-nine dollars and ninety-five cents, on condition that the same should be repaid by the defendant to plaintiff with interest on demand.

Fourth. That thereafter, and before the commencement of this action, the plaintiff duly demanded payment of the said sum from the defendant, but the defendant has paid to the plaintiff only the sum of four thousand three hundred ninety-four dollars and forty-eight cents, portion of the said sum loaned as aforesaid, and no more, and the defendant is now justly indebted to the plaintiff for the remainder of said sum, namely, the sum of seven thousand seventy-five dollars and forty-seven cents (7,075.47) with interest thereon from the 22nd day of July, 1873.

Wherefore the plaintiff demands judgment against the defendant for the said sum of seven thousand seventy-five dollars and forty-seven cents (7,075.47) with interest thereon from the 22nd day of July, 1873.

GEORGE BLISS,
Plaintiff's Attorney.

8 UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

George Bliss, of said city, being duly sworn, says that he is the attorney for the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to true; deponent further says that the reason this verification is not made by an officer of the plaintiff is that the said plaintiff is a corporation incorporated and having its place of business and carrying on its business at Baltimore, in the State of Maryland, and not established or transacting business in the county of New York, or said southern district of New York, in which county and district deponent resides: neither do any one of its officers reside in said county or district, but all reside in said State of Maryland. Deponent further says that his knowledge is derived from

the possession of the checks and vouchers of indebtedness herein, and his information and belief are derived from the statements made
9 to him by the president of the plaintiff and an inspection of correspondence between plaintiff and defendant in regard to the matters in suit.

GEORGE BLISS.

Sworn to before me this 12th of November, 1874.

EDMUND H. SMITH,
Notary Public, N. Y. Co.

10 In the circuit court of the United States for the southern district of New York, in the second circuit.

THE CENTRAL NATIONAL BANK OF THE CITY of Baltimore, plaintiff,
against
THE ROYAL INSURANCE COMPANY, DEFENDANT.

The answer of the Royal Insurance Company, the defendant in this cause, to the complaint of the above-named plaintiff.

First. The said defendant, answering the said complaint, says that it has no knowledge or information sufficient to form a belief as to whether or not the allegations contained in the paragraph of the said complaint numbered "First," or any or either of them, are or is true; and the defendant therefore controverts the said allegations in the said paragraph contained, and each and every of them.

11 Second. The said defendant, further answering, admits that it is and was at the time in the "second" paragraph of the said complaint mentioned a corporation, created and existing in pursuance of the statute in said paragraph mentioned, and situated and having its principal place of business as alleged in said paragraph, and an alien, as therein stated.

Third. The said defendant, further answering the said complaint, denies that intermediate the dates mentioned in the paragraph of the said complaint numbered "Third," or at any other time, within the said southern district of New York or elsewhere, the said plaintiff lent to the said defendant, or the said defendant had or received from the plaintiff, the sum of money in that behalf alleged in the said complaint, or any other sum whatever, on the condition in that behalf in the said complaint alleged, or any other condition, or without condition; and the said defendant denies each and every allegation contained in the said paragraph of the said complaint numbered "Third."

Fourth. The said defendant, further answering the said com-
12 plaint, denies the allegations contained in the paragraph of the said complaint numbered "Fourth," and each and every of the said allegations; and the said defendant expressly denies that it is indebted to the said plaintiff in the sum of money in that behalf alleged in the said complaint, or in any other sum, for any cause whatever.

SHIPMAN, BARLOW, LAROQUE & MACFARLAND,
Attorneys for Defendant.

UNITED STATES OF AMERICA.
Southern District of New York, City & County of New York, ss:

Edward Fitch Beddall, of said city, being duly sworn, says that he is the attorney in fact of the above-named defendant; that he has read

the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true. He further says that the reason why this verification is not made by an officer of the defendant is that the said defendant is a corporation incorporated and having its principal place
13 of business at Liverpool, in England, and that none of its officers reside within the State of New York. Deponent further says that his knowledge of the facts stated in said answer is derived from his having personally represented the defendant in the transactions upon which the plaintiff' pretended cause of action is based, and his information and belief in respect to the allegations of said answer are derived from his correspondence with one of the officers of the plaintiff, and communications made by a former agent of the defendant and his attorney and counsel.

E. F. BEDDALL.

Sworn to before me this 10th day of December, 1874.
[L. S.] SOL. HANDFORD,
Notary Public, Kings County.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the thirteenth day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable Judge Shipman, circuit judge.

THE CENTRAL NATIONAL BANK OF BALTIMORE
vs.
THE ROYAL INSURANCE COMPANY.

This cause being still on trial, the jurors sworn in it are called and severally answer to their names. The court grants Mr. Shipman's motion that the court direct the jury to find a verdict for the defendant, and the jury say that, by direction of the court, they find a verdict for the defendant, and so say they all.

Mr. Bliss excepts to the ruling of the court in directing the jury to find a verdict for the defendant.

On motion of Mr. Bliss, it is ordered that the plaintiff have sixty days within which to make and prepare a case, with leave to the
15 *the* same into a bill of exceptions.

A copy from the minutes of the court.

JOHN I. DAVENPORT,
Clerk.

(Endorsed:) U. S. circuit court. The Central National Bank of Baltimore *vs.* The Royal Ins. Co. Extracts from minutes.

16 Circuit court of the United States for the southern district of New York.

THE CENTRAL NATIONAL BANK OF THE CITY of Baltimore
against
THE ROYAL INSURANCE COMPANY.

Judgment this 22nd day of August, 1878.

This action having come on to be heard in its order on the calendar before the honorable Nathaniel Shipman, judge, and a jury, at a stated

term of this court, held at the rooms thereof, at the city of New York, in the southern district of New York, on the 13th day of December, 1877, and having been duly tried, and a verdict having been rendered by the said jury in favor of the above-named defendants: Now, on motion of Shipman, Barlow, Laroque & MacFarland, attorneys for said defendant, it is adjudged that the complaint in that action be, and the same is hereby, dismissed.

And on like motion it is adjudged that the Royal Insurance
17 Company, the said defendant, do recover of the Central National Bank of the city of Baltimore, the said plaintiff, the costs of this action, adjusted at the sum of eighty-three dollars and seventy-four cents ($83\frac{74}{100}$), and that the said defendant have execution therefor.

Judgment signed this 22d day of August, 1878.

J. M. DEUEL,
Deputy Clerk.

(Endorsed:) U. S. circuit court, southern district of New York. C. L. D. 4, p. 92. The Central National Bank of the city of Baltimore against The Royal Insurance Company. Judgment roll. Costs, $. Shipman, Barlow, Laroque & MacFarland, attorneys for defendant, 35 William street, New York City. U. S. circuit court. Filed Aug. 22, 1878. John I. Davenport, clerk.

18 *Bill of exceptions.*

Circuit court of the United States for the southern district of New York.

THE CENTRAL NATIONAL BANK OF BALTIMORE, plaintiff,
vs.
THE ROYAL INSURANCE COMPANY, DEFENDANT.

Afterwards, to wit, on the 11th day of December, 1877, at a stated term of this court, begun and holden at the city of New York, to wit, on the third Monday of October, 1877, befor' the honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, appointed to hold the said circuit according to the form of the statute in such case made and provided, the aforesaid issues so joined as between the said parties, as by the records more fully appears, came on to be tried by a jury duly empannelled and sworn for that purpose, the said trial continuing on the 12th and 13th days of December, 1877, the said pl'ff'
19 being represented by George Bliss, and the defendant by Hon. William D. Shipman and Joseph Laroque, esq'rs. And in the course of the trial the said counsel for the plaintiff did take and allege sundry exceptions to the rulings, both as to the admission and exclusion of testimony and to the charge of the court, and to the refusal of the court to give instructions to the jury as then and there prayed for by him, and to the refusal of the court to submit the evidence in said cause to the jury, which said exceptions are hereinafter specially set forth.

On the said trial the following proceedings among others were had:

The plaintiff, to sustain the issues on its part, by its said counsel offered the testimony taken by deposition of Charles D. Wailes, subscribed and sworn to April 7th, 1875, as follows: Showing that he was insurance commissioner for the State of Maryland, residing in Baltimore, and had been such since May 1st, 1872; that the paper introduced

was a copy of a power of attorney filed in his office by John J. Jackson, in compliance with the laws of the State of Maryland; that the original was placed in his hands by John J. Jackson, he could not say at
20 what date; that in his official capacity he certified the said copy by virtue of a law of Maryland authorizing and requiring him to do so; that apart from the said paper he knew John J. Jackson acted for the Royal Insurance Company.

On being cross-examined he testified: That the Royal Insurance Company was not the only one for which he knew Jackson to act as agent up to July 25th, 1873; that he recollected he was agent for the Berkshire Life; that he was agent for the Merchantile Mutual Insurance Company of New York, but at what date he did not know; that he received a policy from him on his dwelling in the Royal Insurance Company; that he knew of no acts done by Jackson for the other companies except that he paid the license due by them to the State; that he also knew him to pay the license as agent of the Royal Insurance Company.

Upon further direct examination he testified: That he thought that in the years 1872 and 1873 Jackson acted as agent for the Berkshire Life Insurance Company and the Mercantile Mutual Marine Insurance Company, and he had a partner in such agency in regard to the
21 Berkshire Life Insurance Company; the firm was J. J. Jackson & Co., Mr. Morrison being a partner, but whether he had a partner as to the Mercantile Mutual Insurance Company he did not know. The power of attorney was as follows:

"Know all men by these presents, that the Royal Insurance Company, registered and incorporated in pursuance of the statute made and passed in the seventh and eighth years of the reign of her present majesty Queen Victoria, entitled 'An act for the registration, incorporation, and regulation of joint stock companies,' and by that name empowered to sue and be sued, have for divers good causes and considerations thereunto moving, made, ordained, constituted, and appointed, and by these presents do make, ordain, delegate, constitute, and appoint John James Jackson, of Baltimore, Maryland, the true and lawful attorney of the said Royal Insurance Company, to act as the agent and receiver of the said Royal Insurance Company for Baltimore and parts adjacent thereto, and for that purpose and the more fully enabling the said attorney to conduct, manage, and carry on the duties connected with such office or employment of foreign agent and receiver to effect insurances on behalf and in the name of the said Royal
22 Insurance Company, against loss or damage by fire upon all description of buildings, warehouses, goods, and merchandise, in Baltimore aforesaid, and parts adjacent thereto, and to receive proposals for assurance on lives or survivorships on the joint continuance of two or more lives, or the duration of one or more life or lives, for any term of years absolutely or contingently determinable on a life or lives, and all such other assurances, whether connected with life or not, as may be effected according to law, including endowments for widows, children, and other persons in Baltimore aforesaid, and parts adjacent thereto, and to issue policies for the same on receiving the special authority of the directors, manager, or other officer of the said company to that effect, subject, nevertheless, entirely, and under all circumstances, to the instructions which shall from time to time be given by the manager or other officer of the said company to the said attorney; and for effectuating any of the purposes aforesaid, the said Royal Insurance Company do hereby authorize and empower the said attorney to

sign the names of any three of the directors for the time being of the said Royal Insurance Company opposite to or against the com-
23 mon seal of the said company to any policy or policies of insurance to be effected for the above-mentioned purpose upon such printed forms only as shall be supplied to him from time to time, and in such manner as he shall be directed by letters of instruction from the said manager or other officer of the said company; and also, for and on behalf of the said Royal Insurance Company, to collect and get in, ask, demand, and receive, all and every the premiums and other charges, sum and sums of money whatsoever, which shall become due and owing to the said company from any persons or person whomsoever in or about the effecting or granting of any such insurances as aforesaid, or on any other account whatsoever, relating thereto, or otherwise howsoever; and also in the name and on behalf of the said Royal Insurance Company to adjust and settle all or any accounts, with all and every or any persons or person with whom the said John James Jackson shall or may have, as such agent and receiver as aforesaid, or for or on the company's behalf, any dealings or transactions whatsoever, as aforesaid, and also subject to any instructions as aforesaid, to compromise, agree, and determine or refer to arbitration
24 all disputes or differences that may arise between such persons or person and the said Royal Insurance Company, or the said John James Jackson, as such agent and receiver as aforesaid; and also, whenever occasion shall arise, in the name of the said Royal Insurance Company, or otherwise, but on its behalf, to commence and institute any actions, suits, or other proceedings for the recovery of any debts, claims, damages, or demands which the said Royal Insurance Company shall have against any person or persons whomsoever, and upon receipt of all or any of the sum or sums of money, premiums, claims, and demands as aforesaid for the said Royal Insurance Company, and in its name and on its behalf, to give good and sufficient receipts, acquittances, and discharges for the same to any person or persons whomsoever; and also, subject to such instructions as aforesaid, by and out of all the monies which shall come to the hands of the said attorney by virtue of these present', or otherwise, to pay, satisfy and discharge all or any sum or sums of money which may hereafter become due, owing or payable by the said Royal Insurance Company to any person or persons whomsoever for or in respect of any policies of insurance to be granted or effected by the said attorney for or on behalf of the said Royal
25 Insurance Company; and also, subject to like instructions, to adjust, arrange, liquidate, settle, allow, and determine all and every, or any accounts or account, reckonings, disputes, or differences which may hereafter depend or remain unsettled between the said Royal Insurance Company or its said agent and receiver, by and on the said Royal Insurance Company's behalf, and any other person or persons touching, arising, or happening out of any insurance transactions or business whatsoever, and generally to do and execute all such other matters and things for the said Royal Insurance Company or on its behalf in and about the effecting and granting of any such insurances as aforesaid; and of all other matters and things touching, relating to, concerning, or otherwise connected with the duties or business of foreign agent and receiver of the said Royal Insurance Company, which the said attorney shall or may deem requisite or essential in and about the premises, the said Royal Insurance Company hereby agreeing to ratify and confirm, and do hereby ratify and confirm, all and whatsoever the said attorney shall lawfully do or cause to be done

26 in the premises, subject, nevertheless, to such special or other instructions which shall from time to time be given by the said manager or other officer of the said company."

Said power of attorney was duly executed and attested.

The plaintiff then offered the testimony of Seth Reed, taken by deposition, subscribed and sworn the 7th day of April, 1875, as follows: That from March 1st, 1871, to March 1st, 1875, he was bookkeeper in the Central National Bank of Baltimore, and had charge of the general ledger; that he knew John J. Jackson during those years; Jackson was agent for the Royal Insurance Company, so his sign over the door * * * * * indicated; he kept a gold account and a currency account with the Central National Bank; the two accounts were all he kept, one as agent, without any specification of the agency, and the other account as J. J. Jackson & Co.; that a book shown him was the account between J. J. Jackson, agent, and the Central National Bank of Baltimore; one of the items on the credit side of the book, under date of 9th July, 1873, is $12,572$\frac{12}{100}$; another, under no date, opposite
27 the figures "36," is $5,520$\frac{12}{100}$. (Papers shown witness.) Those are checks on the said bank, signed by J. J. Jackson, agent, and endorsed by Alexander Brown and Sons, whose signature he knew; that the amount of said checks are to the debit of his account, as agent, on the books of the bank.

Being cross-examined, he testified that he had heard that Jackson was agent for the Royal Insurance Company of Liverpool, but knew nothing personal about it, except in seeing it on his sign; that the name written across the face of one of the checks shown him is that of P. C. Leary, who was paying teller of said bank at the date of the check; that there also is a stamp across its face, "Good, if properly endorsed," which stamp belonged to the bank, he object of the name and stamp being to bind the bank to pay the check when presented, properly endorsed; that he did not think both the checks were presented to the bank in the same way. One was deposited at the Mechanics' Bank and came through the clearing-house to the bank without being certified; the other also came through the clearing-house, but it was certified; that he could not tell why one was certified and the other was not.

28 The plaintiff then offered in evidence the checks, as follows:

No. 35. BALTIMORE, *July* 9, 1873.

Central National Bank of Baltimore, pay to the order of Mess. Alex. Brown & Sons twelve thousand five hundred and seventy two $\frac{12}{100}$ dollars.

$12,572$\frac{12}{100}$.

J. J. JACKSON, *Ag't.*

(Endorsed:) Alex. Brown & Sons.

No. 36. BALTIMORE, *July* 19, 1873.

Central National Bank of Baltimore, pay to the order of Mess. Alex. Brown & Sons fifty-five hundred and twenty $\frac{12}{100}$ dollars.

$5,520$\frac{12}{100}$.

J. J. JACKSON, *Ag't.*

Certified across the face: "Central National Bank. Good when properly endorsed." Signed "P. C. Leary," and endorsed on the back "Alex. Brown & Sons."

The plaintiff then offered the testimony of W. Graham Bowdoin, taken by deposition, subscribed and sworn April 8th, 1875, as follows: That

he was a banker, partner in the house of Alexander Brown & Sons, of the city of Baltimore, and has been in the firm three years; that he resides in Baltimore, and knows J. J. Jackson, who has been an insurance agent for some years past; that said firm knew him as the agent of the Royal Insurance Company; that Jackson may have been, and he
29 believes was, agent for other companies. He did business in the city of Baltimore from time to time; said Jackson used to buy and sell said firm exchange, as agent of the Royal Insurance Company, his bills sold being on the said company, and he would buy bills in favor of said company; that witness did not think he had any regular time for such purchases and sales; he would draw on the company when he had losses to meet, as witness understood, meaning by losses losses of his company under policies which they had issued; he would buy bills of exchange to remit his premiums on policies. A gentleman by the name of Bedall was introduced, or introduced himself, to said house of Alexander Brown & Sons, by his commission from the Royal Insurance Company, some time in the summer of 1873; he was understood by them to be the agent; he thought he called himself the supervising agent for said company in this country; that these checks already produced were drawn by John J. Jackson, agent, on the Central National Bank of Baltimore, in favor of said firm, and bear their endorsement; that, as he remembers, they were received
30 in payment of sterling bills drawn by said house on Brown, Shipley & Co., England, drawn, he thought, in favor of the Royal Insurance Company.

Certain other papers being shown him, he testified that he thought they were the handwriting of a clerk in said house, and they indicate the amount of sterling bills given by said house for the checks. That he recollected that said house did issue sterling bills of exchange for the equivalent of those checks, and those bills were duly debited in its accounts with the parties on whom they were drawn. That said firm kept two bank accounts, one with the National Mechanics' Bank of Baltimore, and one with the Merchants' National Bank of Baltimore; that he thought those checks went through the National Mechanics' Bank of Baltimore, and in due course of banking operations were paid.

Being cross-examined, he testified: It was understood that all the bills of exchange that were drawn by Jackson on the Royal Insurance Company were to cover losses on policies issued by said company; this was the representation made to us at the time the bills were bought, and they were usually drawn in favor of the parties who met
31 with the losses, but there may have been individual cases in which the bills did not bear the endorsement of such parties, they being represented to us to be out of town, and the representation being made to us that they were drawn for the purposes aforesaid; my recollection is that our house bought all of the bills of exchange which were offered us for sale drawn by Jackson upon the Royal Insurance Company, and which were represented to us to have been drawn for the purpose of meeting losses covered by policies which had been issued by said company. I do not recall any reason why we would not, on the 9th and 19th days of July, 1873, have bought such bills of exchange drawn by Jackson on said company, for $125,72$\frac{12}{100}$ on the first named date, and for $5,520$\frac{44}{100}$ on the last named date, to pay losses under policies which had been issued by said company.

Upon further direct examination, he testified: The said bills were always signed, as I remember, by John J. Jackson, agent, and they were bought upon the credit of the said Royal Insurance Company;

they were signed by Jackson, as the checks in evidence are signed; my recollection is that the transactions were always with Jackson
32 direct, and that he got the money for the bills, but the bills may have been passed to payee in some cases. At the dates I have mentioned, July 9th & 19th, 1873, we had no reason to doubt his authority to so draw, or we would not have respected his authority. He was several times acting consul for the British Government, and in this capacity would draw bills, and he was sometimes the receiver of bills from the other side.

The plaintiff then offered the testimony of Charles H. Pitts, taken by deposition, subscribed and sworn October 16th, 1875, as follows: That he was engaged in the drug furnishing business in the city of Baltimore; that in 1873 he was acting cashier in the Central National Bank of Baltimore; during that year he knows that checks were drawn by Jackson on the Central National Bank; he thought they were signed "agent"; that he made the acquaintance of Mr. Beddall after this overdraft of Jackson's; Beddall was then acting as the agent of the Royal Insurance Company.

The following question was asked the witness: Had you any, and if so, what, negotiation or conversation with him as to the said
33 overdraft; and, if yes, state what the same was, and what was said, as near as you can now remember?

Upon the trial the counsel for the defendant objected to the same as incompetent, on the ground that the conversation occurred long after the close of Mr. Beddall's agency in effecting this arrangement, and after the discharge of Jackson as agent of the company.

The court sustained the objection, excluded the testimony until Mr. Beddall should be called as a witness, to which decision the plaintiff's counsel duly excepted.

The witness further testified that after this overdraft there was communication made to the Royal Insurance Company, stating all the facts coupled with the overdraft, with a statement of account showing the amount and requesting the company to make good the amount; that I received the papers marked C. H. P. No. 1, and I think that it was an answer to a dispatch sent marked C. H. P. No. 2; he also identified the papers marked C. H. P. No. 3, No. 4, and No. 5, as papers which he had seen before, and paper No. 6 he thought he had seen, but was not certain. The said several papers were as follows: (Telegrams of
34 date July 29 & 30, 1873, marked C. H. P. No. 1 and C. H. P. No. 2, are inserted at pages 18th & 19th, post, and consequently are omitted here.)

Being cross-examined, he testifies: I recollect nothing that passed on the morning the overdraft was presented; Mr. Jackson asked the permission of Mr. O'Connor, the president of the bank, to overdraw his account; Mr. O'Connor agreed that he might do so; I do not recollect whether or not the name of the Royal Insurance Company was mentioned in connection with such overdraft or check before it was drawn; I do not know of Jackson's saying anything at the time of presenting the check for payment, or before indicating that it was drawn by him as agent of the Royal Insurance Company; I do not mean to say that Jackson never signed checks as agent for the purpose of paying any other claim than those of the Royal Insurance Company; I do not know whether he kept his own private funds and the funds held by him as agent of other insurance companies, and drew upon them by his checks as agent; his first overdraft was made good by subsequent deposits; I was not present when the second overdraft was made, but I have

35 personal knowledge that it was made; I mean by personal knowledge that when I returned to the city, having been absent, and looked at the books of the bank I saw the entry of the check, and afterwards I saw the check; that is all I know about it. I know that Jackson was agent for other companies at that time, and the companies he was agent for he kept in a separate account; I knew him to be the agent of the Berkshire; I do not know whether he kept the funds of individuals or of estates for which he was agent in the same account in which he kept those of the Royal Insurance Company.

Upon the cross-examination the witness was asked the following question:

Q. How do you know that the account of John J. Jackson, agent, kept with the Central National Bank, was that in which he kept the funds belonging to the Royal Insurance Company?

Defendant's counsel read the answer down to and including the words "Mr. Dillon introduced Mr. Jackson." Counsel for the plaintiff asked that the whole answer be read, and objected to the reading of a portion of it only, and asked that the entire be stricken out unless the

36 whole was admitted, which was denied by the court, to which decision plaintiff's counsel duly excepted.

A. One way that I knew was that I used to see deposit checks drawn to the order of the Royal Insurance Company or to himself as the agent of said company. When the account was opened with the bank Mr. Dillon introduced Mr. Jackson, and we understood that the account opened by Jackson was as agent for the Royal Insurance Company.

Being further cross examined the witness said: I do not recollect all that was said by Mr. Dillon when he introduced Jackson to the bank; he said, "I have brought a gentleman in here who wants to open an account; he has got a dollar and a half to deposit"; he made a deposit, and I presume the dollar and a half was included; I do not recollect any other reason than I have already given for supposing that the account he opened was as agent of the Royal Insurance Company.

Upon further direct examination, he testified: I do not recollect any conversations I had with Jackson in regard to his overdrafts; Mr. O'Connor directed me to honor the draft, and I think he afterwards reiterated the instructions in Jackson's presence.

37 There was a stipulation made to allow Jackson interest provided the account was kept up to five thousand dollars; we considered his balances large; it was one of the largest accounts in the bank; I had no authority to permit overdrafts or to grant loans, in my opinion, and I do not think the president of the bank had any; Mr. Dillon's remark at the introduction of Jackson, that he had a dollar and a half to deposit, was made in jest.

Counsel for the plaintiff then offered in evidence the following letters, it being stipulated as follows: That they were received by the parties to whom they were addressed in due course of telegraph and mail after their respective dates, namely:

1st. Cable received by the defendant July 30th, 1873, or thereabouts.

2d. Letter received by E. T. Beddall, special agent of defendant, July 26th, 1873, or thereabouts.

3d. Letter received by A. B. McDonald, agent of defendant, July 26, 1873, or thereabouts.

4th. Letter received by defendant August 15th, 1873, or thereabouts.

It is further admitted that cablegram annexed, dated July 30th,

38 1873, from Royal Insurance Company, Liverpool, to Central National Bank, Baltimore, as follows: "Telegraph special agent

to report," was sent by defendant to plaintiff, on the day it bears date, after receipt of and in reply to above cablegram dated July 29th, 1873.

And it is further hereby admitted and agreed that the annexed copies of said originals, sent and received as aforesaid, may, for all the purposes of the trial of this action, be regarded and considered as originals and not copies.

Neither party, however, make any admission or stipulation concerning the admission or admissibility of the originals or copies of the said documents as evidence in the cause.

The telegrams and letters are as follows:

BALTIMORE, *July 29th*, 1873.

To ROYAL INSURANCE COMPANY,
Liverpool, England:

Eleven thousand dollars United States currency was overdrafted on this bank by John James Jackson, your agent. This money formed part of the sterling bills remitted you July 9 and July 19th. We ask repayment. Answer.

CHARLES H. PITTS,
As Cashier Central National Bank of Baltimore.

39 [Cablegram from Royal Insurance Company of Liverpool, England, to Central National Bank of Baltimore. Received at Balt. July 30, 1873.]

To PITTS, *Central National Bank of Baltimore:*

Telegraph special agent to report.

[Letter from Central National Bank of Baltimore to E. F. Beddall, special agent of Royal Insurance of Liverpool, England, dated July 25, 1873.]

BALTIMORE, *July 25th*, 1873.

To E. F. BEDDALL,
Special agent Royal Insurance Company,
No. 44 2nd street, Baltimore:

MY DEAR SIR: We are advised this morning by a publication in the Gazette of the withdrawal of your agent's powers at this agency. I hasten to notify you that Mr. John James Jackson, agent of the Royal Insurance Company, kept two agency accounts at this bank—one account in gold and one in current funds. His gold account this a. m. shows a balance to credit in gold coin of $171.68. His agency account shows an overdraft on currency of $11,242.71. The checks issued for same,
I find on investigation, were paid through Mess. Alex'r Brown &
40 Sons to you. The total so paid appears to be the sum of $18,093.00.
Of this sum your company had on deposit and your agent deposited $6,850$\frac{21}{100}$. The amount due us by you is therefore $11,242$\frac{71}{100}$ in current funds, and the amount due by us to you in gold is 171\frac{11}{100}$. In accordance with the conversation had by you with me referring me to Messrs. Wallis and Thomas, I have notified them of the facts, and on their approval I will feel greatly obliged by receiving the amount due to us. I have notified Mr. McDonald, agent-in-chief at New York, and feel confident the Royal Insurance Company will promptly and honorably pay its overdrafts. Asking your kind attention to it,

I am, very respectfully,

JAMES O'CONNOR,
President.

[Letter from Central National Bank of Baltimore to A. B. McDonald, esq., agent Royal Insurance Company, dated July 25th, 1873.]

BALTIMORE, *July 25th*, 1873.

To A. B. McDONALD, Esq.,
Agent Royal Insurance Company, 56 Wall street, New York:

41 MY DEAR SIR: To day, by notification in the Gazette, I note the Royal Insurance Company has revoked the powers of its agent here, Mr. John James Jackson. I beg leave to notify you that Mr. J. J. Jackson, as agent of your company, had two accounts with this bank—one in gold coin and one in current funds. The gold account this a. m. has a credit in gold of $171.$\frac{48}{100}$. The currency account is overdrawn $11,242.$\frac{71}{100}$. The overdrafts arose from checks drawn by J. J. Jackson, agent, and paid to your company, you receiving the money for same. The total paid you was $18,093.00, of which your company had on deposit and deposited $6,850.$\frac{29}{100}$. I have fully informed Mr. Beddall, your special agent, of same, and he has referred me to Messrs. Wallis & Thomas, and beg to notify you and ask repayment of the overdrafts at your good convenience.

Very respectfully, your obedient servant,

JAMES O'CONNOR,
President.

[Letter of Central National Bank of Baltimore to Royal Insurance Company, Liverpool, England, dated August 2d, 1873.]

BALTIMORE, *August 2nd*, 1873.

To the directors of the Royal Insurance Company, Liverpool, England:

42 GENTLEMEN: At a meeting of the board of directors of this bank, held this day, the undersigned, the as. cashier, was instructed to lay before the Royal Insurance Company a copy of the account of John James Jackson, their agent, with this bank, together with a statement in detail of the facts and circumstances under which the said agent drew two checks on the Central National Bank, respectively, to the order of Alexander Brown & Sons of this city, which were delivered to Edward F. Beddall, special agent of the Royal Insurance Company, and were by him paid to the said Alexander Brown & Sons, for two several sterling bills, drawn on Brown, Shipley and Company, of London, by the said Alexander Brown & Sons, payable to the order of the Royal Insurance Company, the said checks consisting exclusively of the amount then on deposit to the credit of the said agent, and an overdraft for the sum of $11,200.00, or about that sum. The undersigned, therefore, gives you this formal notice of the action of the directors, and has the honor to say that the statement in detail above referred to will be forwarded at earliest convenience.

C. H. PITTS,
As. Cashier.

43 Counsel for the plaintiff then offered a duly certified copy of the certificate of organization of the plaintiff.

James O'Conner was then sworn as a witness on the part of the plaintiff, and testified that in 1873 he was president of the Central National Bank of Baltimore, and had been from its organization in 1871; that he knew John James Jackson; that he met him first, he thought, in 1870; that he thought Jackson opened an account with the bank in 1871; that at that time his place of business was about immediately

opposite the bank; he had a sign on the front of the building, apparently cut in wood, running the breadth of the office, with the words, "Royal Insurance Company"; that the building was three or four stories high, with a basement a little below the sidewalk; Jackson's office was in the basement. I had met Jackson previous to the time the account was opened; when the account was opened Jackson was introduced to me by Mr. Dillon, who occupied the office immediately over his; the two came into my office. The president's room is in the rear
44 part of the bank, and he said he brought over Mr. Jackson, who was the agent of the Royal Insurance Company, to open an account with the Central National Bank, and I told him I would be very glad to have it; he said it would be a very good account—a valuable account; and they then spoke of the probable balance he would keep, and I agreed to allow him four per cent. interest on his balances at the time. He was introduced as Mr. Jackson, the agent of the Royal Insurance Company, and I stated that I would be very glad to have the account; the account was opened in form of John James Jackson, agent; subsequently he opened an account as J. J. Jackson & Co.—Mr. Morrison represented the company. There were two accounts, one for gold and one for currency, in the name of John J. Jackson, agent; the J. J. Jackson & Co. account was exclusively currency. Prior to this overdraft I knew of his drawing checks, the proceeds of which were to go to the Royal Insurance Company. I have known of his drawing such checks to the order of Alexander Brown & Sons. Mr. Jackson's manner of remitting funds to the Royal Insurance Company was to give
45 his checks, signed J. J. Jackson, agent, on the Central National Bank, payable to order of Messrs. Alexander Brown & Sons; that was his ordinary course of business. Those checks were drawn in accordance with his ordinary course of business. Alexander Brown & Sons are bankers in Baltimore, and sellers of exchange in Europe; they are the largest sellers of exchange there. Prior to the drawing of the check of July 9th, I saw Mr. Jackson relative to it—it was either the day before or the day it was drawn; Mr. Jackson came into my room in the bank and stated that he was not in the habit of troubling us very much, but in this particular instance he would wish to overdraw his account. I asked him for how much; he said "He was not yet certain how much"; I said to him, "Well, approximately how much"; he thought about $7,000 was what he would require. I asked him how he would repay it, and he stated that he would repay it by the premiums he received from the agents, and that they had been slow in remitting him, but he would hurry them up, and make it good as soon as possible, and I told him that under the circum-
46 stances he could draw, if necessary, for any amount not to exceed $7,000 of an overdraft; he had at that time a balance of probably four, five, or six thousand dollars in the bank; thereafter he drew the check of July 9th for $12,572.52. On the 19th of July, prior to the drawing of the check of the 19th of July, he came into the bank. In the mean time he had made partial deposits, but still his account had not been made good; he stated that he would still further have to ask a loan or an overdraft, and I then discussed the matter very fully with him, and urged him expressly about it; told him that it must be very soon repaid, as we did not wish it to remain in that condition for any time; he assured me that he would attend to it at once, and I asked him then how much he would require, and he said he had a check made out for the exact amount, $5,520.48, and he repeated that his agents had been very slow in making remittances, very unex-

pectedly so, but he was doing all he could to hurry them up, and he would do it again; he would write again that evening to the different agents to send on their remittances to him, and that the amount would not remain out but a short time. I then ordered the teller of the bank to certify the check. As to the agents, he said the subagents or
47 subordinate agents to himself in different other adjacent territory over which he had control, which was in Virginia and the District of Columbia; those agents were agents of the Royal Insurance Company. I am undertaking to state what Mr. Jackson said because we discussed it very fully at the time. Mr. Jackson had no account in the bank but the ones I have mentioned. There was never any question raised as to the extent of Jackson's agency until after his running away from the city and this appearance of Mr. Beddall to the public view there; that must have been somewhere about the 20th of July, 1873. It might have been on the 24th or morning of the 25th of July I saw a published notice of the revocating of Mr. Jackson's powers. It was published July 25th, 1873. (Paper shown to witness.) This is a copy of the notice to which I refer. I cannot say whether I saw Mr. Beddall prior to reading the notice, or at the time of receiving the notice. He came to the bank that day; we spoke about the whole matter of Jackson and his agency, its revocation, and all connected with him. In the course of the conversation it was a question with him whethe
48 Jackson had drawn bills of exchange and sold them to different parties in the city of Baltimore; he stated that he was very anxious about it; that he had gone to the leading buyers of exchange there to learn whether or not Jackson had drawn on the company or sold them any bills, and so far as he had been able to learn he had not found that he had sold any. I had full authority to make loans on behalf of the bank; the board of directors had given me express authority to make whatever loans I deemed proper, and to report them to the board at their meeting. I reported this matter in full. At the time of this interview with Mr. Beddall, he was made acquainted with the facts that these checks were overdrafts. We talked it all over; he knew all about it at the time. I do not know that he knew either the exact extent of the overdraft, or of the overdraft itself, prior to his coming into the bank. (A book shown witness). I know this book; it is a pass-book of the Central National Bank in account with J. J. Jackson, agent; it appears to have been marked here in duplicate; I presume it must be a pass-book Mr. Jackson kept; there may have been another book originally started and lost, and this was used subsequently.
49 It was admitted by counsel that by subsequent payments by Mr Jackson the balance to the debit of this account was reduced to $7,075.47, as of November 12th, 1874.

Witness continues as follows: There has been a stipulation or agreement made with reference to payments, which embraces those payments made by Jackson after the termination of his agency by Mr. Beddall; he made these payments, one on November 26, 1873, of $3 602.83; one on July 24th, 1874, of $600.23; and one on November 12th, 1874, of $191.42, making a total of $4,396.48, leaving a balance of $7,075.47. We consider the account Mr. Jackson kept a large one.

Q. At the time of the overdraft had Mr. Jackson personally such credit that you would have loaned to him that amount of money, either one of the overdrafts?

(Defendant's counsel objected to the question as incompetent. The objection was sustained by the court, and plaintiff's counsel duly excepted.)

I remember seeing the letter-heads which Mr. Jackson used. (Paper shown witness.) I received this letter from Mr. Beddall, dated
50 Baltimore, July 25th, 1873; it has an engraved heading; it is *it is* the same paper which was used by Mr. Jackson. Mr. Beddall had changed his office, according to his notification to the public, to 44 Second street, and he used the letter-heads that Mr. Jackson used, and ran his pen across the location of the office.

The following is a copy of the letter:

[Agency of the Royal Insurance Company, Fire & Life. Capital $10,000,000.]

44 SECOND STREET,
Baltimore, 25th July, 1873.

JAMES O'CONNOR, Esq.,
President Central National Bank, Baltimore:

DEAR SIR: I beg to acknowledge the receipt of your favor of this date, and as I have placed the matter to which you refer in the hands of my company's legal advisers, Messrs. Wallis & Thomas, I leave them to furnish you with the necessary reply to your communication.

I remain, dear sir, your ob't servant,

E. F. BEDDALL,
Special Agent.

Jackson had, on one occasion previous to these two, made an overdraft; I do not remember the exact date; I think it was a good while before—it might possibly have been inside of a year. I think
51 the amount was somewhere about five or six thousand dollars, not to exceed that amount. (Papers shown witness.) I have seen these papers before. I received them from Alexander Brown & Sons and brought them here.

Plaintiff's counsel then offered in evidence two bills of exchange, as follows:

28 July. BROWN BROTHERS & Co.,
£2.213 0 11 st'g. *Baltimore, July* 9, 1873.

Three days after sight of this first of exchange (second and third unpaid) pay to the order of Royal Insurance Company, of Liverpool, twenty-two hundred and thirteen pounds and eleven pence st'g, value received, which place to account of
892 43.

ALEX. BROWN & SONS.

Messrs. BROWN, SHIPLEY & Co.,
London.

No. 2518.

(Across the face:) Accepted 22 Jul., 1873, at the London & Westminster Bank.

BROWN, SHIPLEY & CO.

The foregoing bill of exchange was endorsed on the back as follows:
[Bill stamp cancelled.]
Rec'd.

GLYN & CO.

Pay the Bank of Liverpool or order, p. pro. Royal Ins. Co., of Liverpool.

JNO. H. McLAREN,
Manager.

Per pro. the Bank of Liverpool.

H. HOPPER,
Manager.

From Bank of Liverpool to Glyn, Mills & Co., July 25. 25 57.

52 BROWN BROTHERS & Co.,
Baltimore, July 19, 1873.

£970 14 9 st'g.

Three days after sight of this first of exchange (second and third unpaid) pay to the order of Royal Insurance Co. of Liverpool, nine hundred and seventy pounds fourteen shillings and nine pence st'g, value received, which place to account of
44 29.

ALEX. BROWN & SONS.

Messrs. BROWN, SHIPLEY & Co.,
London.

No. 2568.

(Across the face:) Accepted 6 Aug., 1878, at the London & Westminster Bank.

BROWN, SHIPLEY & CO.

1568 17.

Said bill of exchange bore the following endorsement on the back:
[Bill stamp cancelled.]

Pay the Bank of Liverpool, or order, p. pro. Royal Ince. Co. of Liverpool.

JNO. H. McLAREN,
Manager.

Received, Glyn & Co., per pro. the Bank of Liverpool.

H. HOPPER,
Manager.

53 [From Bank of Liverpool to Glyn, Mills & Co., 8 Aug., 2595.]

Also the notice of revocation of authority of Jackson, published July 25th, 1873, as follows:

"*Notice.*—The Royal Insurance Company has revoked and annulled the appointment and power of John James Jackson, of the city of Baltimore, State of Maryland, to act as agent or receiver for the said city or parts adjacent thereto, to draw bills of exchange on said company, or otherwise in any way or in reference to any locality to act for or as the attorney or receiver of said company or to create or modify any liability to or against the *the* same.

"The business of said company will temporarily and until further notice be carried on by the undersigned at No. 44 Second street, Baltimore. All who are interested in any business of said company, in reference to the liabilities aforesaid, are requested to address or see the

undersigned and to pay to him any sums due, or which may become due, to said company, no one else having authority to act for or bind said company in reference thereto.

"R. F. BEDDALL,
"*Special Agent U. S. A.*"

54 I remember a conversation with Mr. Beddall when Mr. Pitts was present; it was after the 25th of July; it might have been a month after; I think it was about the end of August; that is as near as I can say.

Q. Was anything said at that conversation, and, if so, what, in presence of Mr. Beddall, and in his hearing with reference to his having had knowledge when he received these checks that they were overdrafts?

(Defendant's counsel objects to the question as incompetent and irrelevant. The objection was sustained and plaintiff's counsel duly excepted.)

Being cross-examined, he testified that the Central National Bank went into voluntary liquidation, and ceased to transact business, and its assets were paid to the stockholders; that of its capital stock of $200,000 witness owned $101,000 when it first started, and subsequently acquired more, till at the time it ceased to do business he had become the purchaser altogether of about $180,000 of it, and his interest remained the same. This cause was tried in this court in April, 1876; I was examined as a witness at that trial; I don't know that my recollection of what took place in July, 1873, is better now than
55 it was in 1876; on some matters it may be. I meant to tell the truth when I was examined as a witness in April, 1876; I answered the questions then put to me as fully as I was able at that time; I have not talked over this case with my counsel a great deal since; I have had several interviews with him. I have made several attempts to take testimony in Baltimore since, and have consulted my counsel there about it from time to time. Unquestionably I understood on the former trial that it was very important to get out everything that I could tending to show that Mr. Jackson in his dealings with our bank represented the Royal Insurance Company; everything that related to that was very important, of course; when I was examined as a witness before I endeavored to state rigidly all that I could which had a bearing upon that point. In my statement here to-day, when interrogated about what took place at the time of this first overdraft of the 9th of July, I stated that Mr. Jackson, as a reason for wanting accommodation, made some complaint about the slowness of subagents in making remittences; I said that he said something in that conversation
56 about their being the subagents of the Royal Insurance Company; I mean to say now that in that conversation he said that the subagents whose remittances were slow were subagents of the Royal Insurance Company; he had no other subagents; that is the reason I think he had no agency for the Mercantile Mutual Insurance Company except in Baltimore; I know that from him; that is all I know about it; that is sufficient; I never heard of the Atlas Insurance Company. I never knew he was an agent of the Triumph Insurance Company, or the Andes Insurance Company, or the Amazon. I knew he was an agent for the Berkshire Life. Probably the reason why it did not occur to me on my former examination to state that anything was said on the subject of these subagents being the subagents of the Royal Insurance Company is that the enquiry was not put to me in that shape; I could

not give the whole of the conversation from memory verbatim; I gave only the portions of it I thought applicable; I don't suppose I was asked on that particular point; I don't remember. I don't know whether the conversation on the subject of subagents remissens in mak-
57 ing remittances was on both the 9th and 19th of July. It was on one of those days and it may have been on both; I would not swear that it was on both. I really could not say at this great distance of time; but I know that that statement, in substance, was made with regard to subagents. I will not swear that it was made on the 9th of July. It was made on one of those days, and on both, I think. I think I can swear that it was made on the 19th; I cannot say it was on both. It may have been on the 9th or the 19th. I am positive about its being—it must have been on the 19th. My recollection is derived from my memory, and my memory now brings me to that fact, that I urged him specially that he had not made his former overdraft good. I had the conversation on the 19th of July with Jackson, in the bank. I met him between my own office and the gateway which went into the body of the bank. I think the conversation took place right in front of the gateway; it was between my office and the part of the bank
58 where the clerks were, and near the gateway leading into that part of it. The teller's desk was about 30 or 35 feet from where the conversation took place. The teller could not have heard the conversation.

Q. On your former examination you were asked this question: "Prior to the drawing of the check of the 19th of July, did you have any conversation with Mr. Jackson?" To which you answered: "Yes, sir." And then the question was put, "What was that?" I read the record of your examination: "I found he had overdrawn his account under the first permission to overdraw, about $7,000, but he had deposited." Is that your present recollection of what occurred on that occasion?

A. It is.

Q. How did you come to say this morning, then, that when he came in he told the exact amount he wanted to overdraw and had the check for it in his hand and showed it to you, and stated, if I understood you right, the exact amount he wanted to overdraw? You so stated this morning, didn't you?

A. No; I think not. I said that he had in his hand the second time a check for some 5,500 and odd dollars, which corroborates what you have just now stated.

Q. Didn't you state this morning that he stated the precise amount that he wished to overdraw, and handed you the check?

A. The second time; certainly.

59 Q. What did you mean, then, when you testified in April that he said he didn't quite know how much he wanted to overdraw, but he might want to go up to the full limit of $7,000?

A. That was the first time.

Q. The question and answer I read to you was the question and answer in regard to the 19th of July.

A. The first time he said he did not know how much he would want.

Q. Did you or not testify as I have read to you on your examination in April, 1876?

A. Undoubtedly.

Q. Was that statement true or not?

A. It was, and it is now.

Q. When did you first recollect that when you spoke of subagents, he said subagents for the Royal Insurance Company?

A. I always knew it; but it never was asked me about their being agents for the Royal Insurance Company. I don't pretend to be able to give, after the lapse of so many years, the exact language that I or any person might use. I undertook on the former trial to state what occurred at the time he applied for an overdraft on the 19th of July. I don't know whether I recollected then or not that he said these subagents were the subagents of the Royal Insurance Company.

60 Q. It does not appear in your answer which you have just read.

A. It may not.

Q. So you must have forgotten it at that time that you so testified?

A. I did not speak about it, because I was not asked about it. I was asked to state what occurred on that occasion, and I undertook to state my recollection of the conversations. I repeated in substance then, as I have done now; but with regard to these subagents, I didn't think it was a matter of any importance, because I was not asked about it.

Q. You didn't think at that time that it was material to add that they were subagents of the Royal Insurance Company in stating the conversations?

Q. I did not think it was a matter of any importance, and I don't think so now.

Q. On the last trial this question was put to you, referring to the interview of July 19th, "Did he specify anything about what agents they were, or anything of that kind?" and your answer was, "Subagents he termed them." Did you answer in that way?

A. Of course, if it is there.

Q. (Reads from testimony.) "Was anything said about the locality of the agents?

"A. I think it was spoken of as in Virginia. I believe a large

61 amount of his remittances were from Virginia." Was that your answer?

A. It was and is now.

A. (Still reading.) "Never mind what you believe any further than you know, what he said"; and was not the answer you gave, "What I recollect is, that he said Virginia; he may have said—I positively recollect Virginia."

A. Yes.

Q. How did it happen that when you were interrogated thus closely as to what he said, as to what agents he referred to, you didn't say anything about the Royal Insurance Company at that time?

A. I have told you several times, and I repeat it, because there was no other subagents, and I was not interrogated about it. I was asked about it to-day and great stress was laid upon it, and also about the sign of the Royal Insurance Company. Also about his borrowing on account of the subagents not remitting, and then I told all about it as far as I know, and I tell you again, there were no subagents of any other company; these remittances came from his agents; the largest ones were in Virginia; he had also the adjacent territory of the District of Columbia. They were the sub-agents of the Royal Insurance Company, of which he was the agent.

62 Q. You say that when you were asked first to state what conversation took place on this subject, and next whether he specified about what agents they were, that nobody wanted to know what companies' agents they were, and therefore you did not say they were the agents of the Royal Insurance Company at that time; is that so?

A. Unquestionably; there was no particular stress or strain as you have expressed it, in regard to the subagents. I had no feeling on the

subject, and have none now. I simply thought the question did not call for it. The letter addressed to me by Mr. Beddall, dated July 25th, 1873, was in answer to my letter to him of the same date, and was received by me in response to that letter. Mr. Jackson's office at the time of these transactions was nearly opposite the bank. There was a sign over the basement of the Royal Insurance Company. I think there was also a sign there of the Mercantile Mutual Insurance Company of New York. My recollection is the sign of the Berkshire Life Insurance Company was higher up. I cannot remember whether it had the name
63 of J. J. Jackson as agent on it. I cannot say whether the sign of the Mercantile Mutual had the name J. J. Jackson as agent upon it, but probably it did. I have no special remembrance of a sign in addition to those already named with the name of J. J. Jackson, general insurance agent, fire, marine, and life, but it may have been there; the whole building is decorated with signs. I certainly do not mean to say that I never did see such a sign on that building as J. J. Jackson, general insurance agent. I never saw Mr. Beddall prior to the time when I saw the advertisement in a newspaper on the 25th of July. To the best of my recollection he came around to the bank about one or two o'clock in the day. I am not certain whether he came before he had got my note or immediately after. I had but one interview with him that day as far as I know, and I think he came in pursuance of my note; the note I refer to has been read in evidence. The interview took place in the bank in the president's room. Mr. Pills was present part of the time; the others would call him away; callers were coming in and going out from time to time. I would not undertake to name the
64 persons who were present. I could not tell whether Mr. Beddall or I spoke first. I cannot give you any exact language made use of at the time. I can tell you the substance of what was said. I cannot tell how long the interview lasted. I think it was a very lengthy one; somewhere near half an hour or an hour. I stated to Mr. Beddall that Mr. Jackson had overdrawn his account, and I very strongly intimated that the Royal Insurance Company ought to pay. He said that it was a matter that he had consulted counsel about, and he would be guided by his counsel. He spoke very kindly, and offered if he found on investigation it was due, he would be happy to repay it. His answer to me every time I intimated the idea that the Royal Insurance Company was under any liability for this account of Jackson's was that he must be guided by counsel, and then he said if counsel approve on a full examination he would be happy to repay it. The counsel to whom he referred were Messrs. Wallace & Thomas, of Baltimore. (Paper shown witness.) Blotters of this description might have been in the bank. I
65 did not use them. I never saw them until you called my attention to them some year or a year and a half ago. I had no recollection of them then and have none now. (Papers shown witness.) These are checks paid by our bank and drawn by J. J. Jackson as agent against precisely the same account as the checks which constituted the overdraft, as follows:

[Stamp.]

No. 22. BALTIMORE, *Feb'y* 15, 1872.

Central National Bank of Baltimore, pay to the order of Mercantile Mutual Ins. Co. five hundred and eighteen $\frac{60}{100}$ dollars.

J. J. JACKSON, *Agt.*

$518.60.

[Stamp.]

No. 77. BALTIMORE, 11 *May*, 1872.

Central National Bank of Baltimore, pay to the order of J. M. Anderson, coll'r, three hundred & sixty-five $\frac{45}{100}$ dollars.

J. J. JACKSON, *Agt.*

$365.45.

[Stamp.]

No. 96. BALTIMORE, 3*d June*, 1872.

Central National Bank of Baltimore, pay to the order of Wm. L. Hirst, esq., att'y for Duchess of Leeds, seventy-five hundred dollars.

J. J. JACKSON, *Agt.*

$7,500.

[Stamp.]

No. 177. BALTIMORE, *Oct.* 23, 1872.

Central National Bank of Baltimore, pay to the order of E. O. Hinckley, esq., for $\frac{3}{5}$ of Duchess of Leeds, twenty-two hundred & sixty-nine $\frac{46}{100}$ dollars.

J. J. JACKSON, *Agt.*

$2,269.46.

66 [Stamp.]

No. 200. BALTIMORE, *Dec.* 14, 1872.

Central National Bank of Baltimore, pay to the order of E. O. Hinckley, esq., for $\frac{3}{5}$ of the Duchess of Leeds, six thousand dollars.

J. J. JACKSON, *Agt.*

$6,000.

[Stamp.]

No. 201. BALTIMORE, *Dec.* 16*th*, 1872.

Central National Bank of Baltimore, pay to the order of Gas Light Company, of Balt'o', seventeen $\frac{70}{100}$ dollars.

J. J. JACKSON, *Agt.*

$17.70.

[Stamp.]

No. 205. BALTIMORE, *Dec.* 30*th*, 1872.

Central National Bank of Baltimore, pay to the order of cashier Central National Bank seven hundred and eighty-three $\frac{09}{100}$ dollars.

J. J. JACKSON, *Agt.*

$783.09.

I know G. M. Anderson, collector of taxes in the city Baltimore at that time. I know James H. Barney, collector of taxes in Baltimore; he was Gen'l Anderson's predecessor. The balance due by Mr. Jackson on this account before the subsequent payments which were under the stipulation must have been about $11,000; that balance was the final result of all the past transactions in that account with the bank for whoever it might be.

67 Q. These balances only refer to those overdrafts to show that the checks constituting the overdrafts were included in this account?

A. There was little else in the account, because it resulted in the stoppage of it at the time. These balances had nothing further to do with these checks than with the particular checks constituting part of the account of which there was a balance. I cannot tell without referring to the book how long prior to the 9th of July the account of J. J. Jackson, agent, with my bank had been balanced. (Looks at the pass-books.) The last balance on the book prior to the 9th of July, was of the date of February 4th, 1873. The result of that balance was to show a credit balance to Mr. Jackson of $9,359. The book does not appear to have been balanced at any time subsequent to Feb'y 4th, 1873, and prior to August, 1873. The last date here on either side, of a balance or of the figures that constitute a balance, appears to be July the 15th. There were some credits applied to this account after the 25th of July, and before the three payments which were subsequently made on account of Mr. Jackson.

Q. Where do these credits appear on that account?

68 A. I think probably this one of $215.05, Woodward, Baldwin & Co., that was not paid until after the 19th of July; it had a certain time to run, probably the 22d or 23d.

Q. Does it, or does it not, appear when this $215.05 was received?

A. It appears when it was received or deposited for collection, but it don't show the date at which it was paid.

Q. When was that 215\frac{05}{100}$ received?

A. It was entered having some days to run; the date of its receipt is entered, but the date of its payment was not carried out; the date on which it was matured and paid does not appear on the debit side.

Q. Does there appear to be any balance struck in that account as of any precise date subsequent to February, 1873? If there is, just point it out.

A. I see no date to the balance. I cannot point it out any more than any one else. At the time Mr. Jackson was introduced to the bank nothing was said with respect to his depositing a dollar and a half that I heard; I don't know that my recollection differs from Mr. Pitt's; he may have said that to Mr. Pitt or Mr. Pitt may have said it to

69 him. Nothing of that kind was said to me; I have no recollection of any dollar and a half conversation. The subject of Mr. Jackson acting in behalf of the Duchess of Leeds was not spoken of in my presence prior to the 25th of July, that I know of; it may have been spoken of after July 25th; I cannot say; the checks to the order of the Duchess of Leeds passed through our bank. I don't think they were paid to the order of the Duchess of Leeds; they were paid to the order of the agent of the Duchess of Leeds; they were paid by our bank out of that account. Very likely the subject of the Duchess of Leeds' agency was discussed by Mr. Beddall & myself on the 25th of July. Prior to my letter to Mr. Beddall of July 25th, 1873, I never had any correspondence with any officer or agent of the Royal Insurance Company relative to this account other than Mr. Jackson, nor any personal interview.

Upon a further direct examination, he testified: The Central National Bank has been wound up; it was a voluntary liqu'dation; the stockholders receiving back all their money, and additional sums due to them. I endeavoured to tell the truth on the former trial, and I am certain I

70 did; I have endeavoured to tell the truth now. I did not see the checks that have been produced to the order of the agent of the Duchess of Leeds at the time. They would go through the clearing-house and be attended to by the subordinate officers of the

bank. The first came to my knowledge when this difficulty arose with regard to the Jackson matter. I then examined all the checks of this account that had not been returned to Mr. Jackson. In regard to the pass-book, it don't seem to be balanced beyond a certain period—I mean footed up with a debit and credit amount, except in so far as it in itself shows; the items are here and could be footed up at any time. After February 4th, 1873, Mr. Jackson's account was balanced on the books of the bank, and it was also balanced, (although it is a pencil balance) on the pass book, the book of the depositor. I cannot state when the sign of the Mercantile Insurance Company was put up, whether it was before or after the account was opened; I wouldn't like to state about when those particular signs were put up. Mr. Jackson sold to me as president of the bank a bill of exchange, drawn by him upon the Royal Insurance Company, which was honored promptly.

71 Q. Yesterday some attempt was made to allege a discrepency between your statement of what Mr. Jackson said at the different interviews, that prior to the drawing of the check of the 9th, and that prior to the drawing of the check of the 19th; as I recollect it, you finally said that your impression was that the talk about the sub-agents was just prior to the drawing of the check of the 19th?

A. I said I was positive about that conversation on the 19th.

He further testified: I am not positive whether anything was said upon that subject at the conversation of the 9th.

Q. What is your best recollection?

A. I can hardly say. It is too long ago for me to state whether it was also spoken of on the 9th.

Q. At that conversation on the 19th, that you have said occurred in the passage-way, what portion, if any, was communicated to Mr. Pitts?

DEFENDANTS' COUNSEL. By whom, and when?

PLAINTIFF' COUNSEL. By anybody who he knows communicated it.

(The question was objected to by the counsel for defendant, on the ground that it was incompetent and immaterial. The objection

72 was sustained by the court, and counsel for the plaintiff duly excepted to the decision.)

Being further cross-examined, he testified:

Q. I understand you to have said that there were on this building over this office of Mr. Jackson a sign of the Royal Insurance Company, a sign of the Mercantile Mutual, and a sign of the Berkshire Life; as to the individual sign, you don't appear to be quite clear. Will you tell me why it was, when you were asked, upon your examination-in-chief, whether there was any sign out on that building, whether Mr. Jackson had any sign—the question is, "Do you remember whether he had any sign out," you answered, "He had a sign, it was apparently cut," &c., with the words "Royal Insurance Company." Will you kindly say why it was that it did not occur to you to say that there was also a sign of the Mercantile Mutual Insurance Company, and the Berkshire Life Insurance Company.

A. I was asked positively if there was a sign, singular number, and wishing to be so very particular to give my answer to please you and the other side, I said he had a sign on which there was the name

73 of the Royal Insurance Company. When I was asked if there were other signs, I described them as fully as I could.

Q. Then, in order to be absolutely correct in your answer, you thought it was necessary to limit it to one sign, and you named that of the Royal Insurance Company?

A. It was a question as to whether he had a sign, and I do not see how I could have answered it differently.

Upon further cross-examination he testified: It was not because I thought it was more material for my interest in the case to have it appear that there was one sign of the Royal Insurance Company that I answered in that way. My answers here have no reference to whether it is material to my interest or not. I cannot state the date when Mr. Jackson sold the draft on the Royal Insurance Company to our bank. I think it was in 1872; that is merely an impression. I recollect he never sold me but one draft that I have a distinct recollection of.

The plaintiff then rested.

The defendant, to sustain the issues on its part, offered the testimony of John James Jackson, taken by deposition, subscribed and
74 sworn April 12, 1875, as follows: I reside in Baltimore, Maryland, and am a general insurance agent. (Pass-book shown witness.) This is the pass-book used by me with the Central National Bank of Baltimore during the period embraced between the dates of December 5th, 1871, and July, 1873; during that time I was agent for the Royal Insurance Company of Liverpool England; the Merchantile Mutual Insurance Company; Marine, of New York; the Andes Insurance Company of Cincinnati; the Triumph, of the same place; the Berkshire Life Insurance Company of Pittsfield, Massachusetts; I was also agent for the Duchess of Leeds of England; Mr. F. V. Gray, of Frankfort, Kentucky; and Thomas J. Wilson, guardian, of Baltimore.

The witness was asked the following questions, to wit:

3d. Q. What moneys entered into the account contained in said bank-book (meaning the pass-book), and on what account or accounts were the checks therein charged drawn?

To which he answered as follows:

A. The money of all the interests of the companies and parties
75 I represented as agent, with two exceptions, and also my own personal moneys; the exceptions are the moneys belonging to the Berkshire Life Insurance Company, and the gold premiums of the Mercantile Marine Insurance Company; the checks were drawn to pay my indebtedness to the parties whom I represented as agent; moneys received by me for them, and also checks drawn for my personal expenditures.

Also the following question:

4th Q. Was the money deposited by you as that of any particular principal, and were the checks drawn by you signed or otherwise marked so as to identify the particular principals for whose benefit they were drawn, or were they so drawn as to show that they were for your own individual purposes, when intended for the last-named purposes?

Which he answered as follows:

A. The money deposited by me was general receipts of my office a agent. There was and is nothing in the bank-book (pass-book) to show the particular principals represented by me to whom the money so deposited belonged. The checks were all signed in the same way, and as a general thing they were drawn to the order of the parties for whose benefit they were intended, except those drawn for my own purpose,
76 and those were to a number.

Upon the trial the plaintiff's counsel objected specifically to that position of the answers to the preceeding 4th interrogatory which purports to state the contents of the bank-book, that being a book in evidence; to that portion of said answers and of each of them which purports to state the contents of the checks, on the ground, so far as

they are not produced in evidence, it is stating the contents of a written instrument not shown to be lost, and so far as it may be considered as relating to any checks which are produced, they speak for themselves; that it is not for the witness to explain what the checks show.

The objections were overruled by the court, and plaintiff's counsel duly excepted to the decision.

Upon further examination he testified: The currency account of the Mercantile Mutual Insurance Company was embraced in the general account; the gold premiums of said company were kept in a gold account with the same bank, with myself as agent. The moneys of the Berkshire Life Insurance Company were kept in the same bank
77 in the name of J. J. Jackson & Co. The gold account was necessarily made a separate matter, in order that gold drafts might be drawn by me whenever I required them; the account of the Berkshire Life Insurance Company was so kept to enable a partner of mine in the agency of that particular company to draw checks on the fund as well as myself. This partner had no interest in any other agency held by me, and this was my reason for so keeping that account. The checks (in evidence), dated respectively the 9th and 19th of July, 1873, were drawn for the purpose of remitting or paying to the Royal Insurance Company of Liverpool balances due said company under accounts rendered to the company by me of premiums received and expenditures made on behalf of the company by me; the premiums to which I refer had been previously deposited by me in the Central National Bank of Baltimore in my account therewith, referred to as John J. Jackson, agent.

In answer to a question calling for a statement of all that occurred between the witness and any officer of the plaintiff in connection with the drawing of either of said checks, and before the payment thereof, the witness testified as follows: To the best of my recollection, I
78 obtained the certificate to the check (check of July 19th, in evidence) in person, and when I obtained it I met Mr. O'Connor, the president of the bank, in the front portion of the office, near the door, and he either asked me or I volunteered the statement what I was there for, having the check in my hand, before it was certified; I showed the check I had in my hand to Mr. O'Connor, and told him what I was there for—to have it certified. Some conversation then took place as to the condition of my account, and Mr. O'Connor handed the check to the teller for indorsement, or to be certified, and it was certified. I never drew any bills on the Royal Insurance Company except for the payment of its losses, nor did I ever borrow any money on its credit for any person. I have one of the bundles of the return checks drawn by me upon the account embraced in the book (pass-book) which I now produce and extract from them six, neither of which have any connection with the matters of the Royal Insurance Company. There are many others in the bundle of checks which have no connection with the
79 matters of the Royal Insurance Company, and these six are selected as types of a class; one, dated Jan'y 4th, 1872, is in payment of moneys received by me as agent of Mrs. F. E. Gill, of Missouri, as follows:

No. 207. BALTIMORE, *Jan'y 4th*, 1872.

Central National Bank of Baltimore pay to the order of John Gill, att'y for Mrs. F. E. Gill, one hundred and eighty-one $\frac{05}{100}$ dollars.

$181.05. J. J. JACKSON, *Ag't.*

(Endorsed:) John Gill, jr., ag't & att'y for Mrs. F. E. Gill.

Two are for payment of personal indebtedness, my own personal expenses, as follows:

No. 215. BALTIMORE, *Jan'y 13th*, 1873.

Central National Bank of Baltimore pay to the order of E. F. Pontier forty-five $\frac{25}{100}$ dollars.

45.25. J. J. JACKSON, *Ag't.*

(Endorsed:) C. W. Pontier, H. W. Beenny.

No. 217. BALTIMORE, 18 *Jan'y*, 1873.

Central National Bank of Baltimore pay to the order of David S. Sumwalt forty four $\frac{90}{100}$ dollars.

$44.90. J. J. JACKSON, *Ag't.*

(Endorsed:) David S. Sumwalt.

One, to the best of my recollection, is for the payment of a loss
80 of the Mercantile Mutual Insurance Company, as follows:

No. 192. BALTIMORE, *Dec.* 5, 1872.

Central National Bank of Baltimore pay to the order of Mess. Armstrong, Cator & Co. fifty-five $\frac{00}{100}$ dollars.

$55.00. J. J. JACKSON, *Ag't.*

(Endorsed:) Armstrong, Cator & Co.

Two are for payment on behalf of F. V. Gray.

No. 218. BALTIMORE, 20 *Jan'y*, 1873.

Central National Bank of Baltimore pay to the order of F. V. Gray one hundred & fifty $\frac{}{100}$ dollars.

$150. J. J. JACKSON, *Ag't.*

(Endorsed:) F. V. Gray, J. J. Jackson.

(Across the face:) Central National Bank. Paid. Baltimore, Md.

No. . BALTIMORE, 21*st Jan'y*, 1873.

Central National Bank of Baltimore pay to the order of F. V. Gray or bearer one hundred & seventy five $\frac{16}{100}$ dollars.

$175.16. J. J. JACKSON, *Ag't.*

(Endorsed:) J. J. Jackson, ag't.

I have paid the sum of four thousand three hundred and ninety-four dollars and forty-eight cents to the Central Bank of Baltimore on account of my indebtedness to said bank. A portion of it was paid out
81 of the balance due me on account of the gold account kept by me with said bank, heretofore referred to, by giving my check to said bank on said account, drawn by me and signed J. J. Jackson, ag't.

Being cross-examined, he testifies: I was first constituted agent of the Royal Insurance Company of Liverpool by letter signed by the manager at Liverpool, and afterwards by formal power of attorney, signed, I think, by the chairman of the company, which, I think, was dated the 1st day of October, 1867; this paper was in writing and was deposited by me with the officers of the State of Maryland authorized to receive said paper. (Copy power of attorney, in evidence, shown witness.) I believe this to be a true copy of the paper filed by me with

the proper officer of the State of Maryland. During the period embraced in the bank-book (pass-book) I should say the amount of premiums per year received by me for the Royal Insurance company would average about fifty-five thousand dollars. During the period inquired of, I had five signs on my place of business, two of them were J. J. Jackson, general insurance agent, fire, life, and marine; one of them of the Royal Insurance Company; one of the Mercantile Marine Insur-
82 ance Company, of New York; and one of the Berkshire Life Insurance Company. Two of them were large signs with the names of the Royal Insurance Company and the Mercantile Marine Insurance Company upon them, respectively, and these signs were paid for by the said companies respectively. The other three were signs of my own procuring and were small signs, and one of them indicated that I was insurance agent for the Berkshire Life Insurance Company, and the other two that I was a general insurance agent for fire, life, and marine insurance. In December, 1871, I occupied two rear offices on the first floor of No. 8 South street, Baltimore; early in 1872—I am not able to fix the exact date—I removed to the front basement rooms of No. 8 South street; about the latter part of February, I think. I remained there till 1873. The signs were materially changed from the one office to the other, as the opportunity of displaying them increased; at least two thirds of the signs were changed, and new ones substituted; the signs placed in front were larger and had less matter on them; the description of the
83 signs I have given applied to them, as they were in the office to which I removed, and those were the signs which were there in July, 1873. I do not recollect that I ever stated to officer of the Central National Bank of Baltimore that I was the agent of Mr. Gray, the Duchess of Leeds, or any of the principals I have named other than the Royal Insurance Company. I delivered the checks in suit to Mr. E. F. Beddall, the special agent of the Royal Insurance Company, acting on behalf of the company in settlement of my accounts with the said company. The checks represented what I believed to have been my indebtedness to the company at the time. It was not, however, considered a full settlement. The company claimed that there was a balance still due them of about thirty-five hundred dollars. At the time of giving of the check of July 9th, I had not the amount of it ($12,572.52) to my credit in the bank. I am unable to state the amount to which it is an overdraft. I had previously applied to the president of the bank, Mr. O'Connor, for permission to overdraw my account, and he
84 expressed a willingness to oblige me in the matter; I recollect no circumstance or conversation in which reference was made to the Royal Insurance Company of Liverpool, and as to how the said overdraft was to be returned, and out of what funds or receipts. My only recollection of any conversation or conversations at the time of said application is that when I suggested that I might want to borrow from the bank Mr. O'Connor always expressed his willingness to accommodate me. I am unable to recall any recollection of any conversation at all at the time I desired to have the check of July 19th certified, beyond the general statement that I have heretofore given. I delivered the two checks in suit to Mr. Beddall on their respective dates. I have no means of knowing whether he had any knowledge of their being overd'afts or borrowing. There had been no conversation at that time or previously between Mr. Beddall and myself as to my ability or inability to settle my indebtedness with said company. So far as I was aware, Mr. Beddall's visit to Baltimore had reference to urging the settlement of my delayed accounts, but not necessarily the termination of

85 the agency. It did terminate the agency. I have no means of knowing what the limit of my individual credit with the Central National Bank was at the time of the said overdrafts—whether it was five dollars or fifty thousand. Upon a further direct examination he testified, I have no recollection of ever having filed with the Central National Bank or exhibited to any of its officers a power of attorney from the Royal Insurance Company of Liverpool, or a copy of the same. I recollect exactly what was on my sign as agent of the Mercantile Marine Insurance Company; on one line was "Mercantile Marine Insurance Co., New York"; on another line was "J. J. Jackson, agent." When I was in the back office the additional words "back office" were on it; and when I removed to the front office these words were obliterated. I think the sign of the Royal Insurance Company was the larger of the two, but there was but little difference. They were of entirely different shape. When I took the check of July 19th to the bank to be certified—I think I have answered the question. I am unable to recall, except the general features of the conversation with Mr. O'Connor. I cannot
86 give anything like a positive statement of the conversation. At the date of the drawing of the checks in suit the Royal Insurance Company did not, to my knowledge, need to borrow any money in Baltimore.

Q. Do you remember ever to have mentioned the name of the Royal Insurance Company to any of the officers of the Central National Bank of Baltimore, in connection with either of said checks before they were paid?

A. As I said before, I am unable to recollect the details of any conversation.

The defendant then called as a witness John F. Ewens, who, being sworn, testified as follows: That he was bookkeeper in the office of Mess. Proud and Campbell, the present agents of the Royal Insurance Company in Baltimore; that during the years 1871, 1872, and 1873 he had general charge of Mr. Jackson's office, going to him first in December, 1869, and remaining with him until July, 1873; that when he was with him Jackson was the agent of the Royal Insurance Company; that his recollection was that he opened his account with the Central National Bank in 1871. During the years 1871,
87 1872 and 1873, Jackson represented the Royal Insurance Company of Liverpool, the Mercantile Mutual of New York, the Amazon, the Berkshire Life, and one or two others, the Andes and the Triumph of Cincinnati; he also acted as agent for the Duchess of Leeds, for a Mr. F. E. Gill, Mr. Frank U. Gray, the estate of Ann McKim, and also Mr. Wilson, business of all these constituents being carried on in the same office, after the opening of the account with the Central National Bank; no other bank account was kept, except in that bank, that he was aware of; that he had charge of making deposits and procuring certification of checks; frequently drew checks, and Mr. Jackson sometimes drew checks; the accounts that Mr. Jackson had with the bank were as follows: 1st, the general account of J. J. Jackson, agent; 2d, the gold account for the gold premiums of the Mercantile Mutual and the gold premiums on life policies; and, 3d, an account of J. J. Jackson & Co., in which the premiums of the Berkshire Life were deposited. Mr. Jackson's individual moneys were deposited in the account of J. J. Jackson, agent—the general account. The money transactions of the Duchess of Leeds, Mr. Gray, Mr. Wilson, and the
88 estate of Ann McKim was kept in the same general account; the money transaction had for account of the various insurance

companies named, other than the gold account, and the J. J. Jackson & Co., were also kept in this general account; all moneys received for account of these various constituents, or for account of Mr. Jackson individually, were deposited to the credit of this account, and all payments made for the account of any of these constituents were made by checks drawn against this account.

The witness further testified that he had the principal charge of the books of that business during his employment there, though there were several persons employed in the office at different times as clerks; the books were under his charge, and in the absence of Mr. Jackson he had general charge of the business. Mr. Jackson's office was almost opposite the Central National Bank; there were quite a number of signs on the front of the office; one large one of a peculiar shape, fitting into the peculiarities of the building, "The Royal Insurance Company"; over that was a very large sign, "The Mercantile Mutual Marine"—I think "of New York"—with Mr. Jackson's name as agent on the
89 same sign; and then there were some smaller gilt signs with "J. J. Jackson, General Insurance Agent, Fire, Life, and Marine," I think on the side of the street leading to the other portion of the building; and then there was a sign "J. J. Jackson & Co." (Paper shown witness.) I have seen this blotter before; they were printed by direction of Mr. Jackson in considerable quantities; they were for general distribution amongst the business men of Baltimore, and were distributed among the people with whom Mr. Jackson did business; they were first issued in 1872; I think possibly in 1871; I have seen blotters of this description in use in the Central National Bank prior to July, 1873.

Defendant's counsel offered in evidence one of the blotters, as follows: "J. J. Jackson's General Insurance Agency, Fire, Marine, & Life, 8 South St., Baltimore, represents the Royal Insurance Company of Liverpool, England; Amazon Insurance Company of Cincinnati, Ohio; Triumph Insurance Company of Cincinnati, Ohio; Mercantile
90 Mutual Marine Ins. Co. of New York; Berkshire Life Ins. Co. of Massachusetts."

I have seen these blotters on the counter of the bank over which customers did business; when I was in the habit of drawing checks, the check-book and bank-book were in Mr. Jackson's charge; as a rule I prepared the deposits to go to the bank, but sometimes he did; sometimes I made the deposits; I made the entries of deposits in the blotter, cash, and the check-book, and balanced the check-book. During this period the only currency account which was kept by Mr. Jackson for all the business that I individually had charge of was the account in the name of J. J. Jackson, agent; from the course of business, I was familiar with the several accounts for which moneys were deposited and drawn; no bills of exchange were, to my recollection, drawn on the Royal Insurance Company by Mr. Jackson which were negotiated by the Central National Bank; I was in the habit purchasing bank drafts or checks on New York from the Central National Bank, for the purpose of remitting the balances due the Mercantile Mutual Insurance Company.

91 Q. I show you a check numbered 199, dated December 13th, 1872, payable to the order of "cashier," for $1,259.38, signed J. J. Jackson, agent; will you kindly state what that check was drawn for and what was done with it?

A. I find in my handwriting on the margin the words, "Mercantile currency account, Sept'r and October"; that check was drawn to remit

the balance due on those two months, and the cashier whose name appears there was the cashier of the Central National Bank; it was used in the purchase of a bank check on New York; that was the form in which these remittances was made.

Upon further examination he testified: Mr. Jackson drew on the company in all cases for the payment of losses.

Q. Did you ever know him to draw a bill on the company for any other purpose?

(Plaintiff's counsel objected to the question; the objection was overruled and plaintiff's counsel duly excepted.)

A. No, sir. (Check shown witness.) This check was presented to the bank and a draft obtained for it.

Q. What was done with the draft?

A. It was forwarded to the Mercantile Mutual Insurance Company.

92 (Plaintiff's counsel objected to the question. The objection was overruled and plaintiff's counsel duly excepted.)

He further testified: That transaction had no connection whatever with the Royal Insurance Company.

On being cross-examined he testified: Mr. Jackson sold the bills of exchange which he drew through Alexander Brown & Sons; it never came to my knowledge that he sold to any one else; I never had knowledge of a bill of exchange sold to the plaintiff; the blotters in the bank were outside the counter where the public had access; the check for which a draft on New York was obtained, of which I have testified, had nothing on it about the Mercantile Mutual; I read from the stub of the check book.

Q. Are you prepared to say that there was anything upon the draft to show for what purpose it was to be used?

(Defendant's counsel objected to the question because the defendant's counsel was not permitted to ask the question as to what was on the draft. The court sustained the objection and plaintiff's counsel duly excepted.)

(Paper shown witness.)

93 Q. Is not that the draft drawn on that check?

I presume it tallies with the date; I don't remember the amount of the check.

Q. $783.09?

A. That would be the draft.

Q. Drawn to the order of J. J. Jackson, agent, by , cashier, and drawn upon the National Park Bank of New York, endorsed, "Pay to the order of the Mercantile Mutual Insurance Company, New York, J. J. Jackson, agent"?

A. Yes, sir.

The defendant then called as a witness Edward F. Beddall, who, being sworn, testified that he is special agent of the Royal Insurance Company, and has been in its service since 1862 or 1863; that in July, 1873, he was located in Montreal, Canada, but had received the appointment of special agent for the United States; that he went to Baltimore about the beginning of July, 1873, in connection with the business of Mr. Jackson as agent, to settle up his account, which was in arrears at the time; that he saw Mr. Jackson; that he arrived there first on the 4th of July, 1873; that between that day and July 9th he was engaged in the adjustment of Jackson's accounts; that for the purpose of expediting the settlement, he divided the accounts in three branches; that

94 the first embraced the accounts from the first of January to the

end of May of that year; the second was an overdrawn commission acc't, arising out of the transactions of the previous year; the third were the accounts from the end of May to the time of his visit.

He testified further: I took up the first branch first & reached an adjustment of it on the 9th of July; that balance was paid by a check drawn to the order of Alexander Brown & Sons; they were the bankers of whom I obtained an equivalent in sterling exchange on Brown, Shipley & Co., to the order of the Royal Insurance Company, and remitted it the same day. I next took up the second branch and reached a solution of that account on the morning of the 19th; the balance was paid by a certified check to the order of Alex'r Brown & Sons; it was a certified check; I refused to take it until it was certified; the check was sent to Brown's bank and its equivalent brought back to me in sterling exchange, which I remitted the same day.

Q. What did you with reference to the account after the end of May?

A. I made an appointment with the agent to go into that on the day following the receipt of the last check.

(Plaintiff's counsel objected to the answer as not pertinent to
95 the case, and asked that it be stricken out. The court overruled the objection and plaintiff's counsel duly excepted.)

Upon further examination witness testified as follows: That appointment was not kept; and after waiting four, five, or six days, and failing to hear anything of the whereabouts of Jackson, I revoked the appointment and gave notice of the revocation by publishing it. The notice was published by Wallace & Thomas, counsel for the company.

Q. What knowledge or information had you, if any, on the 19th of July, 1873, as to the manner of Mr. Jackson's keeping his bank account, or the condition of his account?

(Plaintiff's counsel objected to the question; the objection was overruled, and plaintiff's counsel duly excepted to the decision.)

A. I had no knowledge.

Q. Had the subject of his bank account been discussed in any way between you and Mr. Jackson?

(Plaintiff's counsel objected to the question. The objection was overruled, and plaintiff's counsel duly accepted.)

A. No, sir.

Q. Had there been anything said between you and Mr. Jack-
96 son prior to the settlement of that account, as to his ability to pay his indebtedness to the company?

(Plaintiff's counsel objected to the question; the objection was overruled, and plaintiff's counsel duly excepted.)

A. Nothing whatever.

Q. When was the determination to revoke Mr. Jackson's agency first reached?

(Plaintiff's counsel objected to the question; the objection was overruled, and plaintiff's counsel duly excepted.)

A. On the 24th of July; I think it was the afternoon previous to the appearance of that advertisement.

Q. Were you aware of the fact in July, 1873, that Jackson represented other insurance companies as well as the Royal?

(Plaintiff's counsel objected to the question; the objection was overruled, and plaintiff's counsel duly excepted.)

A. Not till I arrived there.

Upon further examination he testified as follows: I was aware of it

prior to July 19th. (Paper shown witness.) This is a letter written by me to Mr. O'Connor, dated July 25th, 1873, and was in response to a letter from him of that date; it is written on a sheet with the
97 heading "Royal Insurance Company, Fire and Life." (The letter is inserted at page 29 ante.)

Q. In the arrangements with the other agencies and with this Baltimore agency, did the company furnish stationary for use in this business?

(Plaintiff's counsel objected to the question; the objection was overruled, and plaintiff excepted.)

A. I think not directly; a certain allowance was made for such expenditures and other office expenses.

Upon further examination he testified: When I took possession of the matters relating to our company, after the removal of Mr. Jackson, I found stationary of that kind in the office, and appropriated it as part of the property of the company. I had the interview with Mr. O'Connor on the 25th of July, at plaintiff's bank; the interview lasted an hour or an hour and a half; this claim of the bank was made upon me, which I repudiated at once; ultimately I referred him to counsel if he wanted any redress; I had but one interview with him on that day.

On being cross-examined he testified: I divided the account into three divisions.

Q. Then, when you swore on your former examination that you
98 divided them into two, that wasn't correct? I will read your answer: "For the purpose of facilitating the settlement, I divided the account into two subdivisions; the first embraced," &c.

A. There were but two accounts; the third referred to the unfinished business.

Q. You divided it into three, then, and when you said before that you divided it into two you were wrong?

A. In one sense there were only two.

On further cross-examination he testified as follows: I do not mean to say that the two included the three; I mean that there were three, but that there were but two accounts; but one was the final account, which was never gone into after that date; there were two in one sense and three in another. On my former examination I said there were two, and subsequently spoke of a third, as you will find on reference to the papers. I subsequently commenced a suit against Jackson in the name of the defendant, claiming a considerable sum; I cannot give the amount now. Mr. Jackson's agency covered Maryland, District of Columbia, Virginia, and North Carolina.

99 Q. Did he attend to all that region personally, or did he have subagents?

A. The company recognized him only. I could not tell of my own knowledge whether he had subagents. I presume he did, though. I did not see in the books that he received remittances of premiums from subagents. I did not find his books in good order; everything was in confusion. I refused to take the second check before it was certified, in order to be sure that I was getting one kind of settlement from him before I gave him my discharge. The balance remaining unsettled was in another account; the two checks represented complete settlements of two accounts. It did not occur to me to get the first checks certified.

Q. The first check having been paid without being certified, you came to the conclusion that there was considerable doubt whether the second one would be paid, and you got it certified?

A. I am not sure, but I think it was suggested to me by the examination.

Q. It didn't occur to you to have the first check certified because that was the biggest?

A. I don't know why I did not; I ought to have done so. My powers of action with reference to this settlement did not cease on the
100 25th of July, when the notice was published; they continued until I made a fresh appointment, about a fortnight afterwards.

Q. Did your powers then cease?

A. That is a legal question that I could not answer. I subsequently proceeded to a further settlement with Jackson. I cannot tell the date when I got the final settlement, but I should think it was some months afterwards. During that time I was negotiating with him continually and reporting the facts to our head office. I finally received from him a sum of money, which I presume I remitted to the head office, but the probability is a very small amount. It went into the accounts. The notice of revocation, which has been read, is a copy of the one I published. I think Jackson took the first check to Alexander Brown & Sons, and Mr. Ewens, his clerk, who has been just examined, took up the second; that is my recollection. My appointment for the United States was made in November, 1872. I first performed duties under that appointment in the spring of 1873, I believe. Prior to that time, and prior to July, 1873, my headquarters were in Montreal for
101 two years. I had not been in this country prior to that time. I have had nothing to do with the Baltimore agency prior to going there in July, except when in the office of the company in Liverpool in November or December, 1872, at the time that this appointment was arranged, discussing the matter with the officers there. I remember at that time the manager telling me that the accounts of the agency were rather slow, but they felt no apprehension in regard to it. It was a general discussion about that agency and others. I was instructed by the manager to acquaint myself with the powers possessed by the different United States agencies, amongst which was that of Mr. Jackson. I spent five or six weeks in Liverpool in getting up any general information in regard to these different agencies. I know the signature of John H. McLaren, who endorsed those bills of exchange; he was then and is now the manager of the company. I was directed by cable to go to Baltimore in July. I was not told what to do, except to look into the accounts that were in arrears. I communicated with my company by cable after I got there. I telegraph'd the fact of my having obtained the first check prior to taking the second one. I got my power to
102 revoke agencies, from Liverpool, subsequent to my arrival in Baltimore. I hadn't the power when I went there; it was not a power to revoke or anything else, but a power to do what I thought necessary in the premises.

The defendant then rested.

Plaintiff's counsel then offered in evidence the excluded question and answer in the deposition of Charles H. Pitts, with reference to Mr. Beddall's knowledge; to which counsel for the defendant objected. The court admitted the testimony for the purpose of rebutting Mr. Beddall's statement that he had no knowledge or information as to the way in which Jackson's bank account was kept, or as to the state of his account, but he refused to admit it for the purpose of binding the defendant in any way.

Plaintiff's counsel claimed its right to have this testimony admitted as tending to show an admission by Mr. Beddall binding upon the com-

pany, and excepted to the decision of the court refusing to admit it for that purpose.

The question and answer is as follows:

103 Q. Had you any, and, if so, what, negotiation or conversation with him as to the said overdraft? and, if yea, state what the same was, and what was said, as near as you can now remember.

A. I recollect having several conversations, or being engaged in several conversations, with Mr. Beddall in the presence of Mr. O'Connor, president of the bank; I recollect having been told by Mr. Gill that Mr. Beddall was aware of Mr. Jackson's intention to make this overdraft on his account in the Central National Bank; I recollect further upon one occasion, when Mr. O'Connor was present, stating to Mr. Beddall that I had been so informed; and Mr. Beddall did not deny the fact, nor did he admit it; he was silent. This occurred soon after the drafts or overdrafts were drawn.

The plaintiff then recalled as a witness James O'Connor, who testified that he had heard the question and answer just read; that the Mr. Gill referred to therein is George M. Gill, an attorney at law, residing in Baltimore, and is the father-in-law of John J. Jackson; that he remembered the conversation testified to; my recollection and knowledge are that Mr. Pitts told Mr. Beddall that Mr. G. M. Gill told him that

104 Mr. Beddall knew all about the overdraft of Mr. Jackson before it was made. Mr. Beddall did not say anything. This conversation took place in the bank, in my room; Mr. Beddall, Mr. Pitts, and myself were present; it was a conversation in which we were all taking part. The remark by Mr. Pitts was in a tone of voice sufficiently loud for Mr. Beddall to hear; as loud as the other things to which he had replied.

Q. Mr. Jackson testified that at the second interview at which a check was certified, he was going with the check, and he met you in the passage-way, and he said he was going to get it certified.

A. He had it in his hand.

He further testified: The desk of the teller whose duty it was to certify the checks, was not in the part of the bank where I met Mr. Jackson; to get to me he must have passed the teller; we had this conversation, and he and I walked together down to the teller, and I handed it in, ordering him to certify it. The draft on the Park Bank (draft identified by witness Ewens in his cross-examination) was certified, sent down to the bank and returned; it is our voucher for the payment of that money.

105 On being cross-examined, he testified: I think I was examined on the subject of this interview on the former trial.

Q. I propose to read the question and answer from the stenographer's notes of the former trial: "Q. What was said upon the point?—A. Mr. Pitts said in quite a loud tone of voice, he spoke it freely, that he had seen Mr. Gill, George M. Gill it was, and Mr. Gill said that Mr. Beddall knew at the time of the overdraft that it was an overdraft; that Mr. Beddall didn't assent or dissent, nor make any reply at all, as if he had not heard the question." Was that your testimony?

A. It was, just the same as it is now.

The plaintiff again rested.

The defendant then recalled Edward F. Beddall, who testified: I have heard the testimony of Mr. O'Connor as to an interview in the bank, when Mr. Pitts and myself were present, in which it is alleged a statement was made by Mr. Pitts that he had been informed by Mr. Gill that

I know at the time of the settlement with Mr. Jackson that the checks were an overdraft.

Q. Did you ever hear any such statement made in any such interview?

106 A. I have no recollection of it whatever.

Q. Would it not have impressed itself on your mind if such a statement had been made?

A. I should think so.

Q. And you have no recollection of having heard any such statement?

A. No, sir.

The testimony here closed.

Counsel for the defendants then moved the court that a verdict be directed for the defendant.

The court then, pursuant to such motion, directed the jury to render a verdict for the defendant, and assigned the following reasons therefor:

First. The loan was in fact for the benefit of Jackson to pay his own debt to the defendant.

Second. Jackson's actual powers as agent were limited by the provisions of the power of attorney, which power gave him no authority to pledge the credit of the insurance company for the payment of his own debts.

Third. The apparent powers with which Jackson was invested by the defendant, or which he exercised with the knowledge of the de-

107 fendant, were not those of a borrower for his own benefit upon the *the* credit of the insurance company.

Fourth. If Jackson had power to borrow money as agent of the defendant he could borrow only for the purpose of paying debts to the company.

Fifth. Assuming that Jackson had power to borrow money upon the credit of the insurance company to pay its debts or that he was clothed with such apparent power, and that his untrue representations to the bank that he was acting in such business, and thus within the scope of his authority would bind the defendant, there is no substantial evidence that he made such representations either in words or by acts. The fact that he obtained permission to overdraw his agency account, where it was notorious that he was acting as agent for a number of persons, and his course of business disclosed to the officers of the bank, who had occasion to pay his checks, that money derived from different sources were deposited in one agency account, and the fact that he represented

108 his means of repayment to be from the collection of the defendant's premiums are not sufficient to enable a jury to find that he represented that the loan was for the payment of the debt of the defendant.

Sixth. The opinion or belief of the bank that the money was being borrowed upon the credit of the defendant, when, in fact, the loan was for Jackson's individual benefit, and where there was substantially an absence of representations by Jackson that he was borrowing it to pay the debts of this defendant, is not sufficient to make this defendant liable unless the defendant was aware at the time the money was received that the loan had been obtained upon its credit, and there is no substantial evidence that the defendant or Beddall, its agent, had such knowledge when the money was received by Beddall and Jackson had been discharged from that portion of his debt.

Counsel for the plaintiff then and there duly excepted to such direction, and requested the court that the case be submitted to the jury upon the whole case.

109 He also requested that the case be submitted to the jury upon the question whether the money was received by the defendant,

with the knowledge of the circumstances under which it was paid, and also upon the question whether the loan was made to the defendant.

The court denied the several requests, and counsel for the plaintiff then and there duly excepted to such decision.

The jury, then, in accordance with said direction, rendered a verdict for the defendant.

It was agreed that the amount claimed by the plaintiff, including interest to December 12th, 1877, is $9,005.08.

And inasmuch as the foregoing several matters of fact and of law, and the said several exceptions so offered and made to the said opinions, instructions, and decisions of the court do not appear upon the record of the trial, therefore on the prayer of the said plaintiff, by his said counsel, the said judge has signed the foregoing as and for the bill of exceptions in the said cause as of the 13th day of December, 1877, the day said verdict was rendered, and at the October term, 1877, of this court.

(Signed) N. SHIPMAN, [L. S.]
Judge.

110 Approved Aug't 12, '78.

SHIPMAN, BARLOW, LAROUQUE & McFARLAND,
For Def't.

GEORGE BLISS,
Att'y for P'ff.

(Endorsed:) Circuit court of the United States, southern district of N. Y. The Central National Bank of Baltimore, plaintiff, vs. The Royal Insurance Company, defendant. Bill of exceptions. U. S. circuit court. Filed Aug. 30, 1878. John I. Davenport, clerk.

111 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-eight.

111 THE CENTRAL NATIONAL BANK OF BALTIMORE, plaintiff in error,
vs.
THE ROYAL INSURANCE COMPANY, DEFENDANT in error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said The Central National Bank of Baltimore, by George Bliss, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that upon the trial of this cause in the circuit court of the United States for the southern district of New York, on the 13th day of December, 1877, the judge holding the said circuit court refused to
112 allow the case to be submitted to the jury and directed the jury to find a verdict for the defendant, The Royal Insurance Company; that thereupon the said jury did find a verdict for the said defendant for its costs of court, and judgment was entered accordingly in favor of said Royal Insurance Company against this plaintiff in error, in the office of the clerk of the said circuit court of the United States for the southern district of New York, on the 22d day of August, 1878, for the sum of eighty-three dollars and seventy-four cents, whereas the case should have been submitted to the jury and judgment should have been ren-

dered in favor of the Central National Bank of Baltimore; and the said Central National Bank of Baltimore prays that the judgment aforesaid may be reversed, overruled, and altogether held for nought, and that it may be restored to all things which it hath lost by occasion of the said judgment.

GEORGE BLISS,
Att'y for Pl'ff in error.

113 (Endorsed:) U. S. Supreme Court. The Central National Bank of Baltimore, plaintiff in error, vs. The Royal Insurance Company, defendant in error. Assignment of error. George Bliss, att'y for pl'ff in error. Due service of a copy of the within admitted Sept. 18, '78. Shipman Barlow, Laroque & MacFarland, att'ys for def't in error. U. S. circuit court. Filed Sept. 19, 1878. John L. Davenport, clerk.

114 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE CENTRAL NATIONAL BANK OF BALTIMORE, plaintiff & appellant,
vs.
THE ROYAL INSURANCE COMPANY, DEFENDANT & respondent.

Know all men by these presents that we the Central National Bank of Baltimore, and James L. Worth, of the city of New York, are held and firmly bound unto the above-named defendant and respondent in the sum of two hundred and fifty dollars, to be paid to the said defendant, for the payment of which, well and truly to be made, we bind ourselves, and each of us our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above-named plaintiffs have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the judge of the circuit court of the United States for the second circuit in the district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in force and virtue.

115 CENTRAL NATIONAL BANK OF BALTIMORE,
Seal of the C. N. B. of Balt.
JAMES O'DONNOR,
President.
JAMES L. WORTH. [SEAL.]

Sealed and delivered this 28th day of August, 1878, before me.

[SEAL.] H. S. WILKINS,
Notary Public, Kings Co., N. Y., & for N. Y. County.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

James L. Worth, being duly sworn, doth depose and say that he is

worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. L. WORTH.

Sworn to this twenty-eight day of August, A. D. 1878, before me.
H. S. WILKIN,
Notary Public, Kings Co., N. Y., & for N. Y. County.

Approved.

WM. G. CHOATE, *D. J.*

(Indorsed:) U. S. circuit court. Central National Bank of Baltimore ag'st The Royal Insurance Company. Copy. Bond for costs on writ of error. George Bliss, proctor.

116 UNITED STATES OF AMERICA, *ss:*

To the Royal Insurance Company, greeting:

You are hereby cited and admonished to appear and be at the Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New York, wherein the Central National Bank of Baltimore is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

WM. G. CHOATE,
Dist. Judge.

117 (Indorsed:) The Central National Bank of Baltimore ag'st The Royal Insurance Company. Citation.

Service of within citation admitted Aug't 30, '78.
SHIPMAN BARLOW & LAROCQUE & MACFARLAND.
AUG. 30, 1878.

(Indorsement on cover:) No. 517. The Central National Bank of Baltimore, plaintiff in error, vs. The Royal Insurance Company. S. New York C. C. U. S. Filed 8th October, 1878.

JAN 14 1881
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

THE CENTRAL NATIONAL BANK OF BALTIMORE,
Plaintiff in Error,

vs.

THE ROYAL INSURANCE COMPANY.

Error to the Circuit Court of the United States for the Southern District of New York.

Statement and Brief for the Plaintiff in Error.

STATEMENT.

The action was brought to recover $7,075.47, with interest on that sum, which was alleged to have been borrowed by the defendants of the plaintiffs in July, 1873. At the trial a verdict was directed for defendants, to which plaintiffs excepted and bring their writ of error.

There is no dispute that the plaintiffs in that month made two loans by allowing over-drafts to be made upon them by one James J. Jackson, and that the sum claimed is the unpaid balance of those loans or over-drafts.

It is also undisputed that Jackson was at that time, and had been for a long time, the agent of the defendants, but the latter deny that he was either actually or apparently authorized to borrow money on their credit, or to act so as to make them liable therefor. It is also undisputed that the money borrowed

went directly to the defendants, the checks on which he drew the money from the plaintiffs being made by him to the order of foreign bankers in Baltimore and handed by him to another agent of defendants, who took them to the bankers to whose order they were drawn and received for them bills of exchange to the order of defendants, which he transmitted to them.

It is also undisputed that this money was so paid by Jackson to the defendants on account of a prior existing indebtedness due from him to them by reason of his having received money for them from various sources which he had not paid over.

It will therefore be seen that this is not, as is often the fact in cases of agency, a case where the question is, which shall lose by the fraudulent act of a third party, but whether the defendants shall be made to disgorge something which they have got by the fraud of one who was for some purposes admittedly their agent, or whether they shall retain our money and use it to pay their agent's overdue debt to themselves. They will be no poorer after surrendering this money than they would have been if their agent had not committed this fraud upon us.

Stated more in detail, the facts and questions involved are as follows:

The defendants are a British Insurance Company, engaged in insuring both property and lives. Jackson had been, since 1867 (fol. 81, 19), the "agent and receiver" of defendants "for Baltimore and ports adjacent thereto" (fol. 21), appointed under a written power-of-attorney, which is at folio 21 of the Record. It was filed in a public office, but was not shown to have come to plaintiffs' knowledge (fol. 85).

In 1871 Jackson opened an account with plaintiffs. He was introduced as "Mr. Jackson, the agent of the Royal Insurance Company" and the President then stated to him he "would be very glad to have the account" (fol. 44). Two accounts were opened in the name of "John James Jackson, agent," one being a gold account, and one a currency account. He subsequently opened another account, as "J. J. Jackson & Co.," a Mr. Morrison being the "Co." (fol. 44). The officers of the Bank understood that the account opened by Jackson, as

agent, was as agent for the Royal Insurance Company (fol. 36).

Jackson was, in fact, before the overdrafts were made, the agent of five other insurance companies, and of some private persons, but he never disclosed to the Bank his agency for any body or person other than for the Royal Insurance Company (fol. 83). Jackson's office was, however, opposite the Bank, and from a period subsequent to the opening of the account, but prior to the overdraft, there were on the building he occupied signs of the other insurance companies of which he was agent (fol. 82), one of them being the company in the agency for which he had a partner (fol. 77). The existence of three of these signs—one being that of the Royal, and one that of the company in whose agency Jackson had a partner—was known to the President of the plaintiffs (fol. 62).

There was also some evidence that blotters, having on them Jackson's name as a general insurance agent, with a statement of the companies he represented, were printed and distributed by Jackson, and that some were seen on the counters of the Bank over which customers did business (fol. 90), but there was no evidence that any officer of the Bank ever saw them (fol. 65).

Jackson used in his business letter-heads which were headed "Agency of the Royal Insurance Company, Fire and Life,' and made thereon no reference to other companies (fol. 50).

It also appeared that, in fact, Jackson deposited in his account of "J. J. Jackson, agent," moneys received by him for persons other than defendants, but it did not appear that this fact was known to the Bank (fol. 34, 35) and the pass book contained nothing to show it (fol. 75). It also appeared that he drew out moneys by checks drawn to the order of other parties for whom he was agent, and for payment of personal debts (fols. 65, 79) but it did not appear that this was in fact known to the officers of the Bank (fol. 35.)

The account having been opened in 1871, or thereabouts, Mr. Jackson, on July 9, 1873, applied (fol. 45) to the Bank for permission to overdraw his account to the extent of about $7,000, which he was allowed to do. On July 19 he, on a similar application, was allowed to make a further overdraft of $5,520.18 (fol. 46). The amount claimed in this suit is the balance of the two overdrafts, after crediting some subsequent

deposits and credits. On the occasion of one, if not both (fol. 57), of these applications for leave to overdraw, Jackson gave (fols. 47 56), as the reason of his desire to do so, the fact that his sub-agents—agents for the Royal Insurance Company (fol. 56)—in Virginia and the District of Columbia, were slow in making their returns of premiums and he stated that he would repay by the premiums he received from such agents (folio 45). There were no sub-agents except those of the Royal Insurance Company (fol. 61). Having got the first authority to overdraw, Jackson, on the same day, July 9, drew a check in favor of Alex. Brown & Sons for $12,572.52, which included not only the overdraft of $7,000, but a balance remaining to his credit previous to the overdraft (fols. 27, 28). Jackson delivered the check to Mr. Beddall, the special agent of the defendants, on account of his, Jackson's, overdue (fol. 93) accounts with the company (fols. 83, 84, 94). Beddall at once took the check to Brown & Co., and received a bill of exchange on Liverpool to the order of the Royal Insurance Company (fol. 51), which he remitted to them (fols. 29, 30, 94). In like manner the overdraft of $5,520 48 on July 19 was by check to the order of Alex. Brown & Sons (fol. 28), which was on that day delivered to Beddall, who insisted upon having it certified (fol. 94), and who at once sent it to Alex. Brown & Sons, and on the same day got a like bill of exchange to like order (fols. 94, 52).

After this, Jackson disappeared for a time, leaving a portion of his account with the Royal Insurance Company still unadjusted (fols. 94–95), and on July 25 Beddall published a notice of revocation of Jackson's agency (fols. 96, 53). On the same day the bank notified Beddall (fol. 39), as special agent of the defendants, and McDonald, the general agent at New York (fol. 41), of the facts, and claimed a repayment of the overdraft.

On July 29th, by cable, plaintiffs notified the insurance company at its home office in Liverpool that (fols. 38, 37) "eleven thousand dollars United States currency was overdrafted on this bank by John James Jackson, your agent. This money formed part of the sterling bills remitted you July 9 and July 19. We ask repayment."

And on July 30 a dispatch was received from the company showing the receipt of this notice (fols. 39, 37).

The bill of exchange forwarded July 9 was accepted by the drawees July 22, and was payable three days after sight (fol.

51). It was therefore payable with grace July 28, and would appear to have been paid at maturity (fol. 30). The bill of exchange forwarded July 19 was accepted by the drawees Aug. 6, and was payable Aug. 12, and would appear to have been paid at maturity (fols. 52, 30).

The errors asserted and intended to be insisted upon are the following,

1. The refusal of the Court to submit the case to the jury on the whole case (fol. 108).

2. The refusal to submit to the jury the question whether the money was received by defendants with the knowledge of the circumstances under which it was paid (fol. 109).

3. The refusal to submit to the jury the question whether the loan was made to defendants.

But the several errors can most conveniently be considered together.

I.

In the view we take of the questions involved in this case, it is not absolutely necessary to define or decide precisely what were Jackson's actual or apparent powers as agent for defendants. At the same time it will aid in arriving at a correct conclusion, if they are briefly pointed out.

(*a*) So far as the powers conferred upon Jackson by his warrant of appointment were concerned, he was authorized to "act as agent and receiver of the said Royal Insurance Company for Baltimore and parts adjacent thereto, and for that purpose, and the more fully enabling the said attorney to conduct, manage and carry on the duties connected with such office of foreign agent and receiver" (folios 21, 22), he was authorized to make insurances of lives and property, and to "issue policies, on receiving the special authority of the directors" (fol. 22), with authority to sign the names of any three of the directors to policies, upon forms furnished him; "and also for and on behalf of the said Royal Insurance Company to collect and get in, ask,

demand and receive all and every the premiums and other charges, sum and sums of money whatsoever, which shall become due and owing to the said company from any person or persons whomsoever in or about the effecting or granting of any such insurance as aforesaid, *or on any other account whatsoever relating thereto or otherwise howsoever;* and also in the name and on behalf of the said Royal Insurance Company to adjust and settle all or any accounts with all and every or any persons or person with whom the said Jackson shall or may have as such agent and receiver as aforesaid, or for or on the company's behalf any dealings or transactions whatsoever as aforesaid, with authority (fol. 24) to compromise and refer to arbitration, to bring suits, to give receipts, and, subject to instructions, "by and out of all the moneys which shall come to the hands of the said attorney by virtue of these presents *or otherwise*, to pay, satisfy or discharge all or any sum or sums of money which may hereafter become due, owing or payable by the said Royal Insurance Company to any person or persons whomsoever for or in respect of any policies of insurance;" and also with power to (fol. 25) "adjust, arrange, liquidate, settle, allow and determine" all matters arising out of insurance transactions; and also "of all other matters and things touching, relating to, concerning or otherwise connected with the duties or business of foreign agent and receiver of the said Royal Insurance Company which the said attorney shall or may deem requisite or essential in and about the premises."

(*b*) As to the construction put upon these powers, it is to be noticed that Mr. Beddall, in his published notice of revocation of Jackson's powers (folio 53) revokes his authority to "act as agent or receiver for the said city or parts adjacent thereto, to draw bills of exchange on said company, * * * or to create or modify any liability to or against" the defendants.

It also appears (fol. 48) that Beddall had recognized his power to draw bills of exchange and had made inquiries to see if he had exercised that power.

The evidence further showed that as such agent of the defendants Jackson bought and sold exchange; that is,

he bought bills of exchange in favor of that company, presumptively to remit to the company, and he drew bills on said company which he sold to raise money (fol. 29), these bills being signed John J. Jackson, agent, drawn upon the Royal Insurance Company, bought by bankers in Baltimore on the credit of the Royal Company, and honored by the latter (fol. 31). He had sold to the plaintiffs at least one draft drawn by him on the Royal Insurance Company which was honored (fols. 70, 73). He drew his checks for remittances to the order of Alexander Brown & Sons (fol. 45).

His power, therefore, to create a liability against the Company by issuing drafts was therefore, in practice, conceded.

His power to create a liability by the issue of checks is denied by defendants.

II.

Without passing definitely upon the question whether the defendants were bound by Jackson's actual or apparent powers, so that they would have been liable under other circumstances to repay the money to us, it is respectfully insisted that the defendants received the money with a full knowledge of the means by which it was obtained, and that they cannot avail themselves of the results of the agent's acts without ratifiying those acts.

If one person knows that another has acted as his agent without authority, or has exceeded his authority as agent, and with such knowledge accepts money, property or security, or avails himself of advantages derived from the act, he will be regarded as having in all respects ratified the act, provided the knowledge comes to the employer before such a change of circumstances has occurred as would render it inequitable to hold him.

Jackson made the loan or overdraft as the apparent agent of the defendants, and thereby obtained the money. The defendants received that money with a full knowledge of his acts, and cannot retain it without ratifying his acts.

The cases upon this point are numerous and uniform.

In *People's Bank of Belleville vs. Manufacturers' National Bank of Chicago* (11 Otto, 181), this Court states the doctrine as follows:

"All the parties engaged in the transaction, and the privies, were agents of the defendant. If there were any defect of authority on their part, the retention and enjoyment of the proceeds of the transaction by their principal constituted an acquiescence as effectual as would have been the most formal authorization in advance, or the most formal ratification afterwards.

"These facts conclude the defendant from resisting the demand of the plaintiff (*Wharton on Agency*, sec. 89; *Bigelow's Estoppel*, 423; *Railroad Company vs. Howard*, 7 Wall., 392; *Kelsey vs. The National Bank of Crawford County*, 69 Pa. St., 426; *Steamboat Company vs. McCutchen & Collins*, 13 *Id.*, 13). A different result would be a reproach to our jurisprudence."

In *Bryant vs. Moore* (26 Maine, 84), it is held "that if one person knows that another has acted as his agent without authority, or has exceeded his authority as agent, and with such knowledge accepts money, property or security, or avails himself of advantages derived from the act, he will be regarded as having ratified it. This will not be the case where the knowledge that the former has exceeded his authority is not received by the employer so early as to enable him, before a material change of circumstances, to repudiate the whole transaction without essential injury. If, for instance, a merchant should authorize a broker by a written memorandum to purchase certain goods at a price named, and the broker should exhibit it to the seller, and yet should exceed the price, and this should be made known to the merchant when he received the goods; if he should retain or sell them, he would ratify the bargain made by the broker and be obliged to pay the agreed price. But if he had received the goods without knowledge that they had been purchased at an advanced price, he would not be obliged to restore them or pay such advanced price if he could not, when informed of it, repudiate the bargain without suffering loss. In such case he would not be in fault. The seller would be, and he should bear the loss."

In *Elwell vs. Chamberlain* (31 N. Y., 611, 619), the Court of Appeals of New York say: "It is not material that the plaintiffs authorized or knew of the alleged fraud committed by their agent in negotiating the sale of the notes. They cannot be per-

mitted to enjoy the fruits of their bargain without adopting all the instrumentalities employed by the agent in bringing it to a consummation. They have ratified the sale by seeking to enforce payment of the check given for the thing sold. If an agent defrauds the firm with whom he is dealing, the principal not having authorized or participated in the wrong, may no doubt rescind, when he discovers the fraud, in terms by making complete restitution. But so long as he retains the benefit of the dealing, he cannot claim immunity on the ground that the fraud was committed by his agent and not by himself. The plaintiffs, therefore, stand in the same position as if they had made the representation or authorized it to be made."

The appropriation of the fruits of the wrongful acts of an agent with a knowledge of all the facts generally constitutes a ratification.

Thompson vs. Craig, 16 Abbott N. S., 29.

In *Murray vs. Bininger* (3 Keyes N. Y., 107) the principal received and, after notice, retained notes received by his agent on a wrongful sale of property, and was held liable.

In an earlier case the same Court held that a principal cannot enjoy the fruits of a bargain made by his agent, without adopting all the instrumentalities employed by the agent in bringing it to a consummation, and therefore held a principal bound by an agent's unauthorized representations on a sale of land.

Bennett vs. Judson, 21 N. Y., 238.

In *Smith vs. Tracy* (38 New York, 79), the Court of Appeals held that where a party claims and retains the property of another, knowing that it was obtained by an unauthorized use of his name, it is a ratification of the assumed agency which involves his assent to the original contract.

See also *Benedict vs. Smith*, 10 Paige N. Y., 126.

It is a well-settled rule of law that a principal who knowingly receives the benefit of an agent's unauthorized act, thereby ratifies the same and becomes liable therefor.

Horter vs. Silliman, 4 Week. Dig., 136; Sup. Ct. of Penn., decided Feby. 12th, '77,

where the principal who knowingly received the proceeds of an unauthorized indorsement was held liable upon the notes.

In *Patten vs. Brittain* (10 Iredell Law, 8), an agent had authority to purchase personal property, but only so far as he had in hand cash of his principal. He purchased on the credit of his principal. The principal settled with him on the theory that he had paid cash, but received the property and converted it to his own use after notice that it had been purchased on his credit, and he was held liable to pay for it.

In this case it was claimed that the notice was not received until after the goods had come to the hands of another agent of defendant.

In *Eadie vs. Ashbaugh* (44 Iowa, 519), one whose agency had expired sold medicines with a warranty and took notes in payment. These notes the principal received and sued, and he was held to have ratified the unauthorized warranty, because he could not be permitted to claim the benefit of the agent's acts without assuming its liabilities.

In *Mundorff vs. Trickenham* (63 Penn., 87), it was held that if an agent obtain possession of property under an unauthorized condition, the principal must either return the property or hold it subject to the condition.

It was a case where an agent, sent to obtain plaintiff's note, gave an agreement in his principal's name to protect it at maturity, and the principal was held bound.

When an agent does an act for the use of his principal, and the principal enjoys the benefits and fruits of the act, he shall not afterwards be allowed to say that the act was illegal.

Ruggles vs. Wash. Co., 3 Mo., 496.
Hastings vs. Bangor House, 18 Me., 436.
Low vs. Connecticut R. R. Co., 46 New Hamp., 284.
Reid vs. Hibbard, 6 Wis., 175.

So in the older English cases:

When a party takes the benefit of an unauthorized loan or purchase obtained on his credit by his known servant or em-

ployee, his subsequent adoption of the transaction is equivalent to an original authority.

Bolton vs. Hillersden, 1 Lord Ray., 224.
Rimmell vs. Sarpayo, 1 Car. & P., 254.
Precious vs. Abel, 1 Esp., 350.

In *Bolton vs. Hillersden* (*supra*), it was held that, although a master has never intrusted a servant to charge him by signing notes in his name, yet, if the money for which the note is signed comes to the use of the master, he will be bound by it.

And in *Rimmell vs. Sarpayo* (*supra*), if a coachman of a party go in his master's livery and hire horses which his master uses, the master will be bound to pay for the hire, although he has agreed with the coachman to pay him a large salary to provide horses, unless the lender had some notice that the coachman hired them on his own account, and not for the master.

In *Dunlop's Paley on Agency* (171), the rule is stated as follows:

It is evident there can be no stronger ratification of the act of an agent than the principal availing himself of the benefit of such act, although unauthorized; and that in like manner a person by availing himself of the act of one whom he had not originally appointed his agent must be deemed retrospectively to have created the agency from which he derives a profit. In either case the presumed ratification subjects the principal to the same liabilities to a third person, or to the agent as if the latter had, in one case, acted within the scope of his powers, or, on the other hand, had been a duly constituted agent.

(*a*) In *Foster vs. Swasey* (2 Woodb. & M., 217, 223), Judge Woodbury says: "The theory is not in such a case that he binds his employer by any engagement which he is not empowered to make, but that his employer cannot take the benefit of his sales without taking the burthen of them, and that he must repudiate the whole, and not merely a part, where all are dependent and united. That if he does not choose to ratify the whole, he must ratify nothing connected and interwoven, and that the fraud or falsehood, if bad at all, is bad for the whole, and restores the parties to the condition in which they stood before it happened.

"The employer of an unfaithful agent is to suffer by his mis-

conduct, generally, rather than his victim. Hence, in this case, if the agent did at the sale what he was not authorized to do, and it amounts to a falsehood or fraud, and the defendant repudiates it, he must repudiate the matter or engagement to which it related, and restore things to the position in which they would otherwise have stood. * * * It would not be the course here, if the sale was void, to rescind the sale and restore the lumber on the one hand and the note and draft on the other, because the lumber has, doubtless, been sold and worked up, and the draft converted into money, and the relief would rather be to give damages to the amount for which the note was received, and order the latter to be returned."

(*b*) The numerous cases holding silence to be a ratification of the unauthorized act of an agent rest on the same principle.

Where an agent without authority borrows moneys in the name of his principal, and the latter, when they have been applied to his use, and payment is demanded of him, fails within a reasonable time thereafter to disavow the act of his agent, the jury is authorized to consider the principal as assenting to what was done in his name.

Gold Mining Co. vs. National Bank, 6 Otto, 640.

When an agent goes beyond the letter of his instructions, the principal must within a reasonable time repudiate the act, or be bound by his acquiescence.

Law vs. Cross, 1 Black., 533.

If the principal, after a knowledge that his orders have been violated by his agent, receives merchandise purchased for him contrary to orders, and sells the same without signifying any intention of disavowing the act of the agent, an inference in favor of the ratification of the acts of the agent may fairly be drawn by the jury.

Bell vs. Cunningham, 3 Peters, 69, 81.

In *Breed vs. First Nat. Bank of Colorado* (*4 Colorado*, 481, 507), the Court say: "If Dawley was without original authority to borrow money on behalf of his principal, but did in fact so borrow and used it in a manner advantageous to the party to be charged, the ratification of his unauthorized act may be inferred

from the silence of the principal on the knowledge of the facts. It is his duty, if he does not acquiesce in the unauthorized act to repudiate it. If he fail to do so within a reasonable time after notice, the jury may draw an inference of ratification."

III.

The general principle enunciated in these cases will hardly be denied, but it will be claimed that the company received the money at the moment it was paid to Beddall, and that at that time neither Beddall nor the company had any knowledge that the money had been obtained by any use of defendant's credit.

The answer to this is two-fold:

First. Beddall did know the fact, or, if this is going too far, there was at least evidence that Beddall did know it, and plaintiff was entitled to have the case submitted to the jury upon that evidence.

Second. The interposition of Beddall between Jackson and the Royal Insurance Company as the medium by which the money passed from the former to the latter, did not have the effect to entitle the company to retain it, if they would not have been entitled so to retain it, if it had passed directly from Jackson to the company.

First, as to Beddall's knowledge:

Mr. O'Connor, the president of plaintiffs (fols. 103, 104, 105), and Mr. Pitts, the former cashier, swore (fols. 102, 103) that George M. Gill, Jackson's father-in-law, had stated that Beddall knew of the intention of Jackson to make the overdraft; that he knew all about the overdraft before it was made (fol. 103), and that Pitts repeated this statement to Beddall and he was silent, neither denying nor admitting. Mr. Beddall, when his attention was called to this testimony, stated that he had no recollection of such a conversation, and thought he would have remembered it (fol. 106); but he did not directly deny that the conversation occurred, nor did he deny that he in fact had such knowledge of the overdraft. The conversation with Beddall was about the end of August (fol. 51).

Beddall's powers continued till long after the checks were

received (fol. 100). He communicated to the company the receipt by him of the first check before he took the second one (fol. 101).

(*a*) As to the effect of the silence of Beddall after the assertion that he had knowledge of the overdraft, it is undoubted that "what is asserted in the presence of a party to a suit, and not contradicted by him, is received in evidence against him on the ground that the silence is an implied admission of the truth of what was said."

Batturs vs. Sellers, 5 Harris & Johns., 117, 119.
Vincent vs. Lessee of Huff., 8 Serg. & R., 381, 388.

Such is the force of the implication as an admission that it constitutes sufficient evidence to authorize a jury to find affirmatively the existence of the facts not denied.

Wells vs. Drayton, 1 Rep. Const. Court (Mills. So. Car.), 111.
Hayslep vs. Gymer, 1 Ad. & El., 162.
State vs. Perkins, 3 Hawk., 377.

(*b*) Various facts go to confirm the belief that Beddall must have had such knowledge. He knew as early as November or December, 1872, that Jackson's accounts "were rather slow" (fol. 101). In July he was directed by cable to go to Baltimore and look into the Jackson's accounts, which were in arrears (fols. 93, 101). From July 4th to July 9th—the day the first overdraft was made—he was engaged in the examination of Jackson's accounts, dividing his arrears into three classes: First, those from January 1st, 1873, to the end of May; second, an overdrawn commission account, arising out of the business of the previous year; and then the accounts from the end of May to the time of his visit (fol. 94). There was, therefore, a long arrears. This fact alone certainly suggested that Jackson was in pecuniary difficulties. Besides, it appears that Beddall required the second check to be certified, in consequence of something "suggested to me by the examination" (fol. 99).

Add to these facts of Beddall's failure to make any reply when told that his father-in-law had asserted his prior knowledge of everything about the overdraft, his failure to deny that he in fact had such prior knowledge, his knowl-

edge of the facts which so clearly showed Jackson to be in pecuniary difficulties that in consequence of his examination he required the check to be certified; add to these, we say, the fact that Beddall considered it necessary to revoke Jackson's power to "create any liability against" the company, that the checks Jackson drew were signed by him as agent, and were to the order of Alexander Brown & Sons, and not of Beddall, there is certainly abundant evidence to justify any jury in finding that Beddall took the checks with a knowledge of the overdraft and the circumstances attending it.

Second. As to the effect of the interposition of Beddall between Jackson and the defendants in the receipt of the money.

(*a*) As to the knowledge of the company of the circumstances under which our money was procured by Jackson, the facts are these:

The first check was given July 9, and the bill of exchange was given on that day (fol. 51). It reached Liverpool and was accepted by the drawees July 22 (fol. 51). By its terms it was payable three days after sight, which made it payable July 28. Our formal notice and claim was served on Beddall July 25 (fol. 39). Our telegraphic notice of the overdraft was sent to the company on the 29th (fol. 38).

The second overdraft was made July 19; the bill of exchange was procured on that day, it was not accepted till August 6, was therefore payable August 12 (fols. 52, 30). On July 29 the company had our telegraphic notice of the claim. On July 30 they replied.

The balance of the two overdrafts, as agreed (fol. 109), was, with interest to December 12, 1877, $9,005.08. The amount of the second overdraft was $5,520.48, on July 19, 1873. If we add to that the interest to December 12, 1877, we find that the amount of the aggregate claim chargeable to the second overdraft was $7,219.37, which leaves $1,786.71 as chargeable to the first overdraft.

(*b*) Of course we understand that it is constantly stated in decisions and text-books that an agent acting within his authority is to be regarded the same as if the company stood in his

place—that, as is sometimes said, he is the company. But we submit that this assertion of a principle admitted to be correct in its application to many corporate transactions, has no pertinency when applied to facts such as appear here.

The ground upon which a principal is in any similar case held bound to return money obtained by the unauthorized act of his agent, is in effect that it is against conscience for him to retain it. In the forum of conscience, it can surely make no difference whether the money was in August handed directly to the company in Liverpool or London, by a messenger sent by Jackson, or whether it was handed to the agent of the defendants in Baltimore, who himself forwarded it to the company.

Suppose Jackson had drawn his checks to the orders of the Royal Insurance Company, or had procured with them bills of exchange and had sent them by mail, or by express, or by a special messenger to the company at Liverpool, would not the company have been bound by any knowledge as to the overdraft communicated to it before its actual receipt of the checks in Liverpool? If so, can it make any difference that, instead of forwarding the identical checks to Liverpool, or himself purchasing and forwarding the bills of exchange, he drew checks—not to Beddall's order, but as he was in the habit of doing when he was remitting funds to the order of Alexander Brown & Sons (fol. 45)—and gave these checks to Beddall, who, never having for one moment the power to receive or use the money, took them really as Jackson's messenger to Alexander Brown & Sons, and received bills of exchange in favor of the Royal Insurance Company which he forwarded to them?

Beddall was the mere messenger, carrier, or instrument for transferring the fund from Jackson to the company at Liverpool. He had not the power to retain it, and at no time, either before or after the transfer of the checks to the bills of exchange, could he have obtained any money on account of the transaction.

2 Daniels on Negotiable Instruments, 510.
Morse on Banking (2d Ed.), 255.
See also *Johnson vs. Bank of North America*, 5 Robertson N. Y., 554, 589.
Ex parte Bignold, 1 Deacon, 713, 735; 2 Mont. & Ayr., 633.

Although there seem to be no adjudications precisely simi-

lar, the question of what constitutes delivery in cases where the right of stoppage *in transitu* is claimed, is analogous.

The rule is stated by Chancellor Kent (2 Kent's Com., 545), as follows:

If the delivery to an agent be for the purpose of conveyance to the vendee, the right of stoppage continues, notwithstanding such a constructive delivery to the vendee; but if the goods be delivered to the carrier or agent for safe custody, or for disposal on the part of the vendee, and the middleman is by the agreement converted into a special agent for the buyer, the transit or passage of the goods terminates, and with it the right of stoppage.

This rule is approved and confirmed in the case of *Harris vs. Pratt* (17 N. Y., 249), where the subject is exhaustively treated.

IV.

But our right to the money may be maintained on still broader grounds and wholly independent of the question whether Beddall was *pro hac vice* the company, or whether Beddall had knowledge of the facts connected with Jackson's obtaining the money. No matter how or when the money reached the defendants, as they gave nothing for it, but received it for a precedent debt, they were liable to repay it to us, if we reclaimed it from them before, on the faith of it, they had changed their position.

The money when obtained was taken by one agent, placed in the hands of another agent, and remitted to a common principal, who, long before the remittance was received, was fully informed by the Bank of everything. This remittance, apart from itself, in no respect altered the then existing condition between the principal and these agents. The principal parted with no fresh consideration, did nothing, nor forebore to do anything by reason of the remittance. If it had not been sent, their respective conditions, *inter sese*, would have remained the same.

In *Lawrence vs. Clark* (36 N. Y., 128), a note was given in fraud of a composition deed. It was transferred by the guilty payees to a *bona fide* holder in payment of a precedent debt, and was held void in his hands, as he neither gave consideration for,

parted with security, nor changed his situation on the faith of it.

So where a note was obtained by fraud and transferred to an innocent party, but in payment of a precedent debt.

Cardwell vs. Hicks, 37 Barb., 458.

V.

Again, the money was paid under a mistake of fact; and "it is now settled, both in England and in this State, that money paid under a mistake of fact may be recovered back, however negligent the party paying may have been in making the mistake, unless the payment has caused such a change in the position of the other party that it would be unjust to require him to refund."

National Bank of Commerce vs. National Mechanics' Banking Association, 55 N. Y., 211.

VI.

It is clear that the loan was made, at least so far as the bank was concerned, on the credit of defendants. They understood the account to be that of Jackson, as the agent of the Royal (fol. 36). He was introduced originally as Mr. Jackson, the agent of the Royal Insurance Company, who desired to open an account (fol. 44). He told them he wanted the loan because his sub-agents had not remitted (fol. 45), and he stated he would repay it by the premiums when received (fol. 45), and he had no sub-agents except those of the Royal (fol. 56). O'Connor swears to these facts, and Jackson does not deny them (fol. 86).

These and other circumstances certainly presented facts for the jury to pass upon as to whether the loan was made to defendants.

Thus when the agent of a manufacturing establishment bought a quantity of dye stuffs for the use of the factory, without disclosing the name of his principal, and the bill of goods was made out "Mr. A. B., agent bought of," it was held that the plaintiff

was entitled to recover under a count for goods sold, the jury being warranted from these facts alone in saying that the goods were not sold on the exclusive credit of the agent.

Pentz vs. Stanton, 10 Wend., 271.

Whether in such case the goods are sold on the credit of the agent or on the responsibility of the principal, whoever he may be, is a question for the jury.

Id.

Bently vs. Griffin, 5 Taunt. 356.

Legget vs. Read, 1 Car. & Payne, 16, and note.

In *Pentz* vs. *Stanton*, Judge Sutherland says: "The plaintiff certainly knew that West was acting as agent for some third person. The bill of goods was made out to him as agent, and the draft which he received was signed by West as agent. It would not be an unreasonable conclusion from these facts that the plaintiff did not repose entirely upon the security and responsibility of West, but had regard to the eventual liability of the principal, whoever he might be, if it should become necessary to resort to him."

VII.

The fact that Jackson deposited in his bank account, as agent, moneys belonging to other persons than the defendants, and that he drew upon it for purposes other than those of the defendants, is of little, if any, importance. It was at most evidence to go to the jury.

So far as his drafts upon it are concerned, there is nothing on the face of any of the checks produced which necessarily showed to any officer of the bank that it was intended for some purpose other than that of the Royal Insurance Company. Moreover, as he was entitled to his commissions as agent, and as he received $55,000 a year for the Royal (fol. 82), he was entitled to draw from it for personal matters. He had, also, the right to pay (fol. 24), and was accustomed to pay, (fol. 29), the losses of the company, amounting to from $30,000 to $60,000 a year.

GEORGE BLISS,
ROBERT N. WILLSON,
For Plaintiffs in Error.

Supreme Court of the United States

No. 232.

The Central National Bank of Baltimore,

Plaintiff in Error,

vs.

The Royal Insurance Company,

Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of New-York.

BRIEF FOR DEFENDANT IN ERROR.

WM. D. [illegible]
JOS. L[illegible]
For Defendant in Error.

Supreme Court of the United States.

No. 232.

THE CENTRAL NATIONAL BANK OF BALTIMORE, Plaintiff in Error,

vs.

THE ROYAL INSURANCE COMPANY, Defendant in Error.

Brief for Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW-YORK.

STATEMENT OF THE CASE.

The following facts appear from the record and are undisputed:

At the times of the transactions in question one John James Jackson was carrying on business in Baltimore as a general insurance agent, representing as such agent various insurance companies, fire, marine and life, and also acting as agent for several individual constituents.

Among the companies which he so represented was the Royal Insurance Company, the defendant in error. (Record, p. 26, fol. 74.)

That Jackson represented, as agent, the Mercantile Mutual Marine Insurance Company of New-York, the Berkshire Life Insurance Company, the Amazon Insur-

ance Company of Cincinnati, the Triumph Insurance Company of Cincinnati, and Andes Insurance Company of Cincinnati, as well as the defendant, was matter of public notoriety at the time of the transactions in question.

On the front of his office, which was opposite the plaintiff's bank, were conspicuous signs, with the names of the Mercantile Mutual Marine Insurance Company and the Royal Insurance Company, and others bearing the name of "J. J. Jackson, as General Insurance Agent, Fire, Life and Marine." (P. 29, fol. 82. P. 31, fol. 89.)

Sheets of blotting paper, bearing the name of said Jackson, as agent for the several companies above mentioned, were printed and distributed in Baltimore by way of advertisement, among the people with whom Jackson did business, and were used on the counter of the plaintiff. (P. 31, fols. 89, 90.)

In 1871, Jackson opened an account as depositor with the plaintiff. He kept three separate accounts with the Bank, as follows:

1. An account in the name of J. J. Jackson & Co. This account was used for the business of the Berkshire Life Insurance Company, in the agency for which company Jackson had a partner, and the account was so kept to enable his partner to check against same. (P. 27, fol. 77.)

2. A gold account, in name of J. J. Jackson, agent, for the purpose of depositing premiums received in gold. (P. 27, fol. 77.)

3. A currency account, in the name of J. J. Jackson, agent. This account was used for the purpose of all the business done by said Jackson, as agent for all the above named companies and individual constituents, whom he represented, with two exceptions, and for his personal transactions. The exceptions were the Berkshire Life Insurance Company above mentioned, in which he had a partner, and the gold premiums of the Mercantile Marine

Insurance Company, for which a separate account was necessary. (Page 26, fols. 74, 75.)

The name of the Royal Insurance Company nowhere appeared upon the books of the bank in connection with either of these accounts.

The powers conferred upon Jackson, as agent for the defendant, were clearly prescribed and limited in a written power of attorney, which was matter of public record in the office of the Insurance Commissioner of the State of Maryland, a copy of which was introduced in evidence by the plaintiff, and is set out at length in the record. (P. 7, fol. 21, *et seq.*)

About the beginning of July, 1873, Mr. Beddall, a special agent of the defendant, went to Baltimore to settle up Jackson's account, which was in arrears at the time. For the purpose of expediting the adjustment of the account, it was divided into three branches. The first branch was taken up, and an adjustment reached on July 9. The balance appearing to Jackson's debit on this adjustment was paid on the same day by a check drawn by Jackson on the plaintiff to the order of Alexander Brown & Sons, bankers, and was invested by Beddall, as agent for defendant, in a sterling bill for an equivalent amount, to the order of the defendant, which was, on the same day, remitted by Mr. Beddall to the defendant.

The second branch of the account was then taken up, and an adjustment reached on the morning of July 19. The balance appearing as due by Jackson on this adjustment was, in like manner, paid to Mr. Beddall by a check drawn by Jackson on the plaintiff, to the order of the same bankers, duly certified by the plaintiff, and was invested by Mr. Beddall in the purchase of a sterling bill for an equivalent amount to the order of the defendant, which bill was, on the same day, remitted by Mr. Beddall to the defendant. An appointment was then made by Mr. Beddall with Jackson to go into the third branch of the account on the following day.

This appointment Jackson failed to keep, and after

waiting five days without being able to see Jackson or hear any thing of his whereabouts, Mr. Beddall, on July 25, 1873, under authority of the defendant, revoked Jackson's appointment as agent, and gave notice of such revocation by publication thereof.

Down to this time Mr. Beddall had no knowledge or information as to the manner in which Jackson kept his bank account, or the condition of such account.

The subject of Jackson's bank account had never been discussed between them. Mr. Beddall's determination to revoke Jackson's agency for the defendant was first reached on the afternoon of July 24. (Pp. 32, 33, fols. 93 to 96.)

On July 25, 1873, after the publication of the notice of the revocation of Jackson's powers as agent for the defendant, Mr. O'Conner, the President of the plaintiff, sent for Mr. Beddall, who called at the bank, and was then informed that the checks, which had been paid by Jackson to Mr. Beddall on the 9th and 19th of July, in settlement of the balances found due by him in the adjustment of his account with the defendant, had overdrawn his account with the plaintiff, and that the plaintiff claimed that defendant should make good the amount of the overdraft. (O'Conner, p. 16, fol. 48; p. 22, fol. 64.)

For a reply, Mr. Beddall referred the plaintiff to the counsel of the defendant. (P. 22, fols. 63, 64.)

Prior to July 25, 1873, the plaintiff had not had any correspondence with any officer or agent of the defendant other than Jackson, or any personal interview. (P. 24, fol. 69.)

The plaintiff gave evidence of the introduction of Jackson to the bank at the time he opened his account. (O'Conner, p. 15, fol. 44.)

Also, as to conversations between Jackson and the bank President, at the times when Jackson was permitted to overdraw his account with the bank. (O'Conner, p. 15, fols. 45 to 47; see, also, cross-examination, pp. 19 to 22.)

Also as to the practice of Jackson in drawing bills on

the defendant through Alexander Brown & Sons, bankers. (O'Conner, p. 15, fols. 44, 45; Bowdoin, p. 10, fols. 29 to 33.)

The bills so drawn were in all cases for payment of losses alleged to have occurred under policies issued by Jackson, as agent for defendant. (Bowdoin, p. 10, fols. 29 to 31.)

There was no evidence offered tending to show that Jackson had ever borrowed a dollar of money on behalf of the defendant from any one, or had ever represented that he had authority so to do.

The plaintiff also offered evidence of a statement alleged to have been made by Pitts, the Cashier, on an occasion when Pitts, O'Conner and Beddall were present, to the effect, that one Gill had told him (Pitts) that Mr. Beddall was aware of Jackson's intention to make an overdraft on his account with the bank. That "Mr. Beddall did not deny this fact, nor did he admit it; he was silent." (P. 36, fol. 103.)

According to Mr. O'Conner, "Mr. Beddall didn't assent or dissent, nor make any reply at all, as if he had not heard the question." (O'Conner, p. 36, fol. 105.)

O'Conner fixes the end of August as the time of this alleged occurrence. (P. 19, fol. 54.) This evidence was only admitted for the purpose of rebutting Mr. Beddall's statement that he had no knowledge as to Jackson's bank account, and not as in any way binding on the defendant.

Mr. Beddall denies any recollection whatever of ever having heard any such statement. (P. 37, fol. 106.)

He had previously emphatically denied any knowledge or information whatever, as to the manner of Jackson's keeping his bank account, or the condition of the account at the time of his last settlement with him. (P. 33, fol. 95.)

The evidence having been closed, the defendant's counsel requested the Court to direct the jury to find for the defendant.

The Court granted the request, and instructed the jury to render a verdict for the defendant, assigning certain reasons for such instruction, which appear at page 37.

The counsel for plaintiff excepted to such direction, and asked that the case be submitted to the jury on the whole case.

Also, that the case be submitted to the jury upon the question whether the money was received by the defendant with knowledge of the circumstances under which it was paid, and also upon the question whether the loan was made to the defendant.

The Court denied these several requests, and plaintiff excepted.

The jury, under the direction of the Court, returned a verdict for the defendant. (Pp. 37, 38, fols. 106 to 109.)

Several exceptions were taken by the plaintiff to the ruling of the Court upon questions touching the admissibility of evidence, to which attention will be called hereafter.

POINTS.

I.

On no theory which can be suggested was there any case made which would have justified or sustained a verdict in favor of the plaintiff in error.

1. The powers granted to Jackson, as the agent of the defendant, were specifically set forth and limited in the written letter of attorney, filed in the office of the Maryland Commissioner of Insurance, and set forth in the record at page 7.

The Court will search in vain in this instrument for any warrant for the suggestion that Jackson had power to borrow money on the part of his constituents, or pledge their credit as security for a loan.

"Powers of attorney and all special powers are to be "construed strictly, and the general words are to be con- "strued in reference to the particular terms which form the "subject matter of the instrument, and in furtherance of, "but in subordination to the general powers conferred."

Geiger *vs.* Bolles, 1 *N. Y. S. C. R.* (Thompson & Cook,) 129.

"If a power of attorney, given by a corporation to its "general agent, does not expressly authorize him to make "or endorse promissory notes in the name of or for such "corporation, general words at the conclusion of the instru- "ment, giving him power 'to do all other acts and things "for and in behalf of said Company that he may deem "proper, to further and protect its interests,' cannot have "that effect."

Lawrence *vs.* Gebhard, 41 *Barb.* 575.

"If it is known that an agency is special, or if the cir- "cumstances are such as to make it proper for a party "dealing with him to inquire, the party dealing with him "should inquire as to the nature and state of his authority, "and govern himself accordingly."

Toole *vs.* Levett, 3 *Foster*, (N. H.,) 360.

2. No course of dealing is shown by the evidence which would have justified or sustained a verdict for the plaintiff in error upon the theory that the defendant had so held Jackson out as its agent as to justify the plaintiff in error in acting upon any assumption that Jackson had authority to pledge the defendant's credit in such a transaction.

There is no evidence to show that Jackson ever in point of fact borrowed a dollar on behalf of the defendant from any one. When losses occurred on policies of insurance issued by the defendant through Jackson, as agent, he was in the habit of drawing bills on the defendant through Alexander Brown & Sons, bankers, for the amounts of such losses.

These bills were usually drawn to the order of the

policy holders, and were, in all cases, represented to be drawn for the purpose of paying such losses. (Bowdoin, p. 10, fol. 31.)

Jackson was also in the habit of purchasing bills of the same bankers, for the purpose of remitting to the defendant amounts due by him to it on account of premiums received. (Bowdoin, p. 10, fol. 29.)

These two classes of transactions embraced all the transactions in the purchase or sale of bills of exchange which the evidence in the record covers.

There is not a word to be found any where tending to show that Jackson ever obtained from any one a loan for the defendant's benefit, or applied for such loan.

Mr. O'Conner, the plaintiff's President, on his examination in chief, professed to be familiar with this course of business. (P. 15, fol. 45.)

If his testimony was to be relied upon, he had direct notice when Jackson applied for leave to overdraw his account the second time, that he was asking so to do for the purpose of enabling himself to pay to the defendant his own indebtedness to it. (P. 20, fol. 58.)

3. The record is equally barren of any evidence upon which the defendant could be held liable for Jackson's overdraft, upon any theory of ratification. To make out a case on such a theory, there should be substantial evidence tending to establish two facts:

(*a.*) That in making his negotiation with the bank under which he was permitted to overdraw his account, Jackson represented that he was authorized to pledge the credit of the defendant, and undertook so to do; and

(*b.*) That at the time when Beddall, the defendant's special agent, received the checks in settlement of the accounts he knew that the checks were the result of an overdraft, for the repayment of which Jackson had undertaken to pledge the defendant's credit.

On neither of these points was there any evidence which would have justified or sustained a finding in favor of the plaintiff in error.

There is not a scintilla of evidence to support the theory, that in the negotiation between Jackson and the plaintiff in error, for leave to overdraw his account, or at any other time, he ever pretended or represented that he had any authority to borrow money on the credit of the defendant, or asked to borrow it on such credit.

In this connection the attention of the Court is respectfully invited to the testimony in the record; that of O'Conner, the President of the bank; that of Pitts, the Cashier, and that of Jackson. These are the only witnesses who have testified on this subject, and the Court will look in vain for a single word testified to by either of these persons, as having been said in the negotiations for the overdrafts, to the effect that the loan was asked for account or on the credit of the Royal Insurance Company or justifying any such inference.

Pitts, p. 11, fol. 34.
O'Conner, p. 15, fols. 45, 46, 47. Cross-examination, pp. 19 to 22, fols. 55 to 63.
Jackson, p. 27, fol. 78; p. 29, fol. 84.

These citations cover the whole testimony on the record on the subject of these negotiations.

The record is equally destitute of any evidence tending to show, that when Mr. Beddall, the special agent of the defendant, charged with the adjustment of Jackson's accounts with the defendant, received in payment the checks of Jackson, and invested the same in the sterling bills which he remitted to England, he had any reason to suppose that the money had been obtained on the credit of the defendant, or upon any representation or assumption on the part of Jackson that he had authority to borrow on its behalf or otherwise; or that Mr. Beddall had any knowledge or information whatever as to the manner in which the money represented by the

checks in question had been obtained, or any knowledge or information whatever as to the condition of Jackson's accounts with the bank.

The only direct testimony on the subject was that of Mr. Beddall, who expressly testified that he had no knowledge as to the manner of Jackson's keeping his bank account or the condition of his account; that the subject had not been discussed in any way between them. (P. 32, fols. 95, 96.)

Jackson's testimony tends to confirm Mr. Beddall on this subject, (p. 29, fol. 84,) and no one contradicts him.

There was an attempt made to shake the force of this testimony by evidence as to a statement alleged to have been made by Pitts, in the presence of Beddall and O'Conner, long after these transactions had been closed, to the effect that one Gill had told Pitts that Beddall was aware of Jackson's intention to make the overdraft on his account in the bank, to which statement it is not pretended that Mr. Beddall made any reply at all. On the contrary, both Pitts and O'Conner say that he made no reply; O'Conner adding, "as if he had not heard the question." (P. 36, fols. 103 to 105.)

Mr. Beddall expressly denies any recollection of ever having heard such statement made. (P. 37, fol. 106.)

The date of the interview in question was proved by Mr. O'Conner to have been about the end of August.

It will be observed that this interview, in which the statement is alleged to have been made, is stated to have occurred more than a month after the revocation of Jackson's agency, and still longer after the settlements on which he paid the checks in question.

If, therefore, the statement testified to have been made in Beddall's presence had been heard by him, and he had *expressly admitted* the truth of it, such admission, made by him at that time, would not have been competent to bind the defendant. The evidence as to the interview in which this statement was said to have been made in Beddall's presence, was only admitted by way of rebuttal

of Mr. Beddall's testimony, and not as evidence of any admission of the defendant, or as binding it in any way. (P. 35, fol. 102.)

Again, accepting O'Conner's version of the interviews with Jackson in respect to his proposed overdrafts, there was nothing in those interviews which can be tortured into a representation by Jackson that he was authorized to borrow money in the name or for account of the defendant, or into an attempt to pledge the credit of the defendant for the repayment of the overdraft; and if it had been proved that Jackson had repeated to Beddall, word for word, what had taken place between him and O'Conner on the subject, there would have been no legal objection to Beddall's receiving the checks, or ground for any claim against the defendant for the repayment of the deficit in Jackson's account occasioned by the overdraft.

There is not, however, as has been shown, a word of evidence on the record to sustain the suggestion that Beddall, when he received the checks, had any information whatever on the subject of Jackson's dealings with the plaintiffs, and the burden of establishing such fact, if any such existed, rested on the plaintiff.

There was, therefore, nothing in the case which would have warranted or sustained a finding against the defendant upon any theory whatever.

In the case of Henry *vs.* Wilkes, (37 *N. Y.* 562,) it was held by the New-York Court of Appeals, all the Judges concurring, that "where a party legally obligated to cancel "and discharge a mortgage upon the premises of defend- "ant, falsely assumes to act as the agent of the defendant "in borrowing money to cancel such mortgage, and suc- "ceeds in borrowing the money and in cancelling the "mortgage, but without the knowledge, privity or con- "sent of the defendant, the defendant is not responsible "to the party lending the money, even though he have "the benefit of the discharge of the mortgage in conse- "quence thereof."

In the case at bar it will be remembered that there is no evidence of any false assumption or representation whatever by Jackson.

Neither is there any evidence tending to show that any statement which he is alleged to have made at the time of his overdrafts, or either of them, was untrue. He is alleged to have said, in substance, that he was short of funds, because sub-agents employed by him had been slack in making remittances; that he would hurry them up, and the amount would remain out but a short time. That he had, in point of fact, in part made up his first overdraft by deposits, before the second was applied for, is expressly admitted by O'Conner. (P. 15, fol. 46.) And that payments on account of his indebtedness to the bank, arising from said overdrafts, were made to the bank by Jackson, after the revocation of his agency for the defendant, appears from the testimony of the same witness. (P. 16, fol. 49.) Jackson doubtless intended and expected to make good his account with the bank, but subsequently found himself unable so to do. This was his misfortune; but his inability to pay a debt, the justice of which he never disputed, should hardly be alleged against him as a fraud.

Any sub-agents, so-called, whom Jackson may have employed in carrying on the insurance business of the defendant, which he was authorized to transact, were, in no sense, agents of the defendants. The Company recognized no one in such transactions but Jackson himself. (P. 34, fol. 99.)

Again, the checks of July 9 and 19, 1873, which occasioned the overdraft in Jackson's account with the bank, were received by the defendant, when they were handed to Beddall, its authorized agent for the settlement of Jackson's account in Baltimore, at which time, Jackson's indebtedness to the defendant, on the accounts which had been adjusted to a point, was discharged.

The checks were, on the same day on which they were drawn, invested by the defendant, through Beddall, its

agent, in the purchase of the sterling bills. The transaction, as to each account and check, was fully closed when Beddall received the checks in Baltimore.

No notice to the defendant or to its agents, after that date, could, in any way, affect the question of the defendant's right to retain the proceeds of the checks received from Jackson in settlement of his accounts.

II.

If the defendant's contention under the preceding first point is correct, then the Court properly directed a verdict for the defendant, and refused to submit the case to the jury upon any question, and the exceptions of the plaintiff in error to such directions are not well founded.

The proper rule which should regulate the question of submission or non-submission of cases to the jury, and which has repeatedly received the approval of this Court, is so admirably stated in the case of Pleasants *vs.* Fant, (22 *Wall.* 116,) that counsel may be pardoned for quoting from the opinion somewhat at length.

In that case the Court say:

"No doubt there are decisions to be found which go a long way to hold, that if there is the slightest tendency in any part of the evidence to support plaintiff's case, it must be submitted to the jury; * * * * but, as was said by this Court, in the case of the Improvement Company *vs.* Munson, 14 *Wallace*, 448, recent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, *not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.*".

"The English cases there cited fully sustain the pro-

"position, and the decisions of this Court have generally "been to the same effect."

Again—

"It is the duty of a Court, in its relation to the jury, "to protect parties from unjust verdicts arising from "ignorance of the rules of law and of evidence; from "impulse of passion or prejudice, or from any other vio- "lation of his lawful rights in the conduct of the trial.

"This is done by making plain to them the issues "they are to try; by admitting only such evidence as is "proper in these issues, and rejecting all else; by in- "structing them in the rules of law by which that evi- "dence is to be examined and applied; and, finally, when "necessary, *by setting aside a verdict which is unsup- "ported by evidence or contrary to law.*"

"In the discharge of this duty, *it is in the province of "the Court, either before or after the verdict, to decide "whether the plaintiff has given evidence sufficient to "support or justify a verdict in his favor.* Not "whether on all evidence the preponderating weight "is in his favor; that is the business of the jury; "but, conceding to all the evidence offered the greatest "probative force, which, according to the law of evidence, "it is fairly entitled to, is it sufficient to justify a ver- "dict? If it does not, then it is the duty of the Court, "after a verdict, to set it aside, and grant a new trial. "Must the Court go through the idle ceremony in such a "case of submitting to the jury the testimony on which "plaintiff relies, when it is clear to the judicial mind "that if the jury should find a verdict in favor of plain- "tiff, that verdict would be set aside, and a new trial "had? Such a proposition is absurd, and, accordingly, "we hold the true principle to be, that if the Court is "satisfied that, conceding all the inferences which the "jury could justifiably draw from the testimony, the "evidence is insufficient to warrant a verdict for the "plaintiff, the Court should say so to the jury.

"In such case, the party can submit to a nonsuit, and try "his case again if he can strengthen it, except where the "local law forbids a nonsuit at that stage of the trial, or "if he has done his best, he must abide the judgment of "the Court, subject to a right of review, whether he has "made such a case as ought to be submitted to the jury;

"such a case as a jury might justifiably find for him a "verdict."

In dealing with the case at bar the Circuit Court proceeded in direct conformity with the rule laid down in Pleasants *vs.* Fant.

Conceding all the inferences which the jury could have justifiably drawn from the testimony, there was no sufficient evidence to warrant a verdict for the plaintiff, and the Court so declared.

III.

Several exceptions were taken by the plaintiff's counsel to rulings of the Circuit Court, touching the admissibility of evidence.

As, however, it is understood that the plaintiff in error does not intend to insist in this Court upon the rulings so excepted to as errors, the same not being embraced in the assignment of errors contained in the brief filed by it, it is not necessary here to consider such exceptions in detail.

It is submitted, however, that no error was committed by the Circuit Court in its rulings upon any question touching the admissibility of evidence.

IV.

The judgment of the Circuit Court should be affirmed.

WM. D. SHIPMAN,
JOS. LABOCQUE,
For Defendant in Error.